134-150

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~451.~~ 193

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WILLIAM HENRY, CHARLES CURTIS, DAVID MARTIN, AND H. W. BRAGG, COPARTNERS DOING BUSINESS IN THE FIRM-NAME OF THE WASHOE MILL & LUMBER COMPANY; THE FIRST NATIONAL BANK OF RENO, ET AL., APPELLANTS,

vs.

CHARLES MORAN, DANIEL COMYN MORAN, AND AMIDE D. MORAN, COPARTNERS UNDER THE NAME OF MORAN BROTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED OCTOBER 16, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 471.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WILLIAM HENRY, CHARLES CURTIS, DAVID MARTIN, AND H. W. BRAGG, COPARTNERS DOING BUSINESS IN THE FIRM-NAME OF THE WASHOE MILL & LUMBER COMPANY; THE FIRST NATIONAL BANK OF RENO, ET AL., APPELLANTS,

vs.

CHARLES MORAN, DANIEL COMYN MORAN, AND AMIDE D. MORAN, COPARTNERS UNDER THE NAME OF MORAN BROTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

INDEX.

	Original.	Print.
Caption	*a*	1
Bill of complaint	1	1
Subpœna	22	8
Marshal's return	25	9
Rule to show cause	26	10
Marshal's return	28	10
Notice of motion for injunction	30	11
Marshal's return	31	12
Appearance for defendants	33	12
Answer	35	13
Exhibit "A."—Mortgage from The Nevada and Oregon R. R. Co., and The Union Trust Co. of N. Y., Apl. 25, 1881	53	19
"B."—Statement showing the debts of Thomas Moore, late contractor, assumed by The Nevada and Oregon R. R. Co.	74	27

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 4, 1888.

	Original.	Print.
Amendments to bill	76	27
Amended answer	81	29
Exhibit "B."—Statement showing the debts of Thomas Moore, late contractor, assumed by The Nevada and Oregon R. R. Co.	94	34
Replication	96	35
Stipulations as to time to file briefs	99	36
Findings of fact	101	37
Conclusions of law	109	39
Decree	111	40
Appearance for defendants	115	41
Order granting leave to amend bill, &c	115	41
Orders granting time to file amended answer	116	42
Order continuing hearing of motion for injunction	117	42
appointing special examiner, &c	117	42
" " " in New York	118	43
fixing time in which to take testimony	118	43
to publish testimony and for continuance of motion for injunction	119	43
to perfect answer	119	43
submitting cause, &c	119	43
to pass hearing of motion for injunction	120	43
for decree	120	43
Enrollment of decree	121	44
Evidence for complainants taken in New York	129	46
Examiner's certificate	129	46
Testimony of Thomas Moore	133	48
Frank F. Fowler	156	59
Charles Moran	158	60
Thomas Moore (recalled)	160	60
Charles Moran (cross)	160	61
Exhibit "A."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Aug. 26, 1880	163	62
"B."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Dec. 4, 1880	189	70
"C."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Dec. 4, 1880	196	73
"D."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Feb. 1, 1881	200	75
"E."—Articles of agreement between The Nevada & Oregon R. R. Co., and Thomas Moore, Apl. 26, 1881	204	77
"F."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., May 24, 1881	207	78
"G."—Articles of agreement between Thomas Moore, The Nevada & Oregon R. R. Co., Daniel W. Balch, individually and as attorney, and Alvin Burt, March 25, 1882	210	79
"H."—Minutes of board of directors of The Nevada & Oregon R. R. Co. relating to authority given D. W. Balch to settle financial difficulties of said road	233	89

	Original.	Print.
Exhibit "I."—Articles of agreement between Moran Bros. and Thomas Moore, March 23, 1881	236	91
"J."—Agreement between Moran Bros. and Thomas Moore, Apl. 26, 1882	239	92
Evidence for complainants taken in Nevada	244	93
Examiner's report	245	94
By-laws of Nevada & Oregon R. R. Co	247	94
Proceedings of b'd of directors N. & O. R. R. Co., Nov. 20, 1882	250	96
" " " " Jan. 19, 1883	252	97
" " " " Jan. 26, 1883	256	98
" " " " Jan. 27, 1883	258	99
" " " " Jan. 31, 1883	259	99
Testimony of D. W. Balch	267	102
Exhibit "A."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Aug. 26, 1880	338	134
"B."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Dec. 4, 1880	365	143
"C."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Dec. 4, 1880	371	145
"D."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., Feb. 1, 1881	374	147
"E."—Deed from The Nevada & Oregon R. R. Co., to the Nevada & Oregon R. R. Co., Apl. 26, 1881	377	149
"F."—Articles of agreement between The Nevada & Oregon R. R. Co., and Thomas Moore, April 26, 1881	381	151
"G."—Articles of agreement between Thomas Moore and The Nevada & Oregon R. R. Co., May 24, 1881	384	152
"H."—Certificate of stock, Nevada & Oregon R. R. Co., Reno Division	386	153
Testimony of William Webster	388	154
W. E. F. Deal	391	155
A. H. Manning	399	159
Evidence for defendants in Nevada	421	170
Examiner's report	421	170
Testimony of E. R. Smith	422	171
Exhibit A—Articles of agreement between Lonkey & Smith and The Nevada & Oregon R. R. Co., June 5, 1882	426	173
Testimony of C. A. Bragg	432	175
D. W. Balch	438	178
Exhibit B—Release from H. J. McMurray to Nevada & Oregon R. R. Co., Oct. 17, 1882	439	179
Testimony of W. R. Chamberlain	447	183
C. T. Bender	449	184
Robert H. Lindsay	452	186
Andrew Fraser	458	189
R. L. Fulton	463	191
C. A. Bragg (recalled)	465	193
Jerry Schooling	476	198
Thomas K. Hymers	480	200
Wm. Webster	483	202

	Original.	Print.
Testimony of David Evans	485	202
Mortgage from The Nevada & Oregon R. R. Co. to the Union Trust Co. of New York, Apl. 25, 1881	501	211
Judgment in case of Hatch *vs.* Nevada & Oregon R. R. Co.	514	218
Opinion	518	220
Petition for appeal	522	226
Order allowing appeal	523	227
Bond on appeal	524	228
Record of appeal on minutes	527	229
Citation	529	229
Proof of service of citation	532	230
Clerk's certificate	535	231

a *Record on Appeal to the Supreme Court of the United States.*

In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

MORAN BROS., Complainants,
vs.
H. J. MCMURRAY *et als.*, Defendants.

W. E. F. Deal, Esq., sol'r for def'ts & appellants; Robert M. Clarke, Esq., sol'r for complainants.

1 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

To the honorable the justices of the circuit court of the United States for the district of Nevada, in the ninth circuit, sitting in equity:

The complainants, Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners in the business of banking in the city and State of New York and citizens of the State of New York, bring this their bill of complaint against H. J. McMurray, Jerry Schooling, W. R. Chamberlain, —— ——, and —— ——, copartners doing business in the firm name and style of Washoe Mill and Lumber Company; First National Bank, a corporation created and existing under and by virtue of the laws of the State of Nevada and of the United States of America and doing business of banking at the town of Reno, in said State; Oliver Lonkey and E. R. Smith, copartners doing business in the firm name and style of Lonkey and
2 Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, late copartners doing business at Reno, Nevada; Charles T. Bender, trustee, A. H. Manning, and —— Berry, late copartners in trade at the town of Reno, Nevada, citizens of and residents within the State of Nevada. And thereupon your orators complain and allege—

First. That at all the times hereinafter mentioned the complainants were and they and each of them now are citizens of the State of New York; that at all the times hereinafter mentioned the respondents were and they and each of them now are citizens of the State of Nevada.

Second. Your orators further show that on or about the 25th day of April, 1881, the Nevada and Oregon Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada and engaged in the construction and operation of a railroad in the States of Nevada and California, duly executed under its corporate seal and signed by its president
3 its series of three thousand bonds, each dated on that day and of the denomination of one thousand dollars each; that in and by each of aforesaid bonds said Nevada and Oregon Railroad Company acknowledged itself indebted and promised to pay to the

holder thereof, at the city of New York, in gold coin of the United States of America, one thousand dollars on the first day of June in the year 1930, and also therein and thereby promised to pay interest thereon at the rate of eight (8) per cent. per annum, payable in the like gold coin, interest payable semi-annually on the first days of June and December in each year; that the said Nevada and Oregon Railroad Company in and by each of said bonds stipulated and agreed that the same and all rights and benefits arising therefrom might be transferred by indorsement or by delivery thereof; that the said Nevada and Oregon Railroad Company in and by each of said bonds further stipulated and agreed that should any default be made in the payment of the said interest or any part thereof
4 on any day whereon the same was made payable as aforesaid, and should the same remain unpaid and in arrears for the space of six months, then from thenceforth the aforesaid principal sum of one thousand dollars, with all the arrearage interest thereon, should at the option of the holder thereof or his legal representative become and be due and payable immediately, although the period first therein limited for the payment thereof might not then have expired; that the said Nevada and Oregon Railroad Company further stipulated and agreed in and by each of said bonds that the same was one of a series of three thousand of like amount, date, tenor, and effect, numbered from one to three hundred, both inclusive, amounting in the aggregate to three million dollars, secured by a mortgage or deed of trust to the Union Trust Company of New York, a corporation created and existing under the laws of the State of New York and having its place of business in the city and State of New York, which said mortgage or deed of trust was dated
5 April 25, 1881, and which said mortgage or deed of trust was on all the estate, real and personal, and franchises then owned or thereafter to be acquired by the said railroad company in the States of Nevada and California; that the said Nevada and Oregon Railroad Company further stipulated and agreed in and by each of said bonds that the same should have no force or effect until certified by the said Union Trust Company of New York to be one of the bonds secured by the said mortgage or deed of trust.

Third. Your orators further show that on or about the 25th day of April, 1881, the said Nevada and Oregon Railroad Company, for the better securing of the payment of the said sums of money mentioned in the said bonds and the interest thereon, according to the true intent and meaning thereof, executed by its president and attested by its corporate seal and delivered to the said Union Trust Company its certain mortgage or deed of trust, bearing date April 25th, 1881, sealed with its corporate seal, signed by its president, and attested by the secretary of the said Nevada and Oregon
6 Railroad Company, wherein and whereby, for a good and valuable consideration, the said Nevada and Oregon Railroad Company granted, bargained, sold, alienated, assigned, released, conveyed, and confirmed unto the said Union Trust Company all and singular the following property, franchises, and estate, real and personal, then existing or thereafter constructed, purchased, acquired, held in

possession or owned by the said Nevada and Oregon Railroad Company, to wit: All the railroad line of the said Nevada and Oregon Railroad Company commencing at or near the town of Aurora, in the State of Nevada, and running thence to a point in the State of California, at or near the boundary line between said State of California and the State of Oregon, and where said boundary line between said States intersects the eastern shore of Goose Lake, and extending through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties of Sierra, Lassen, and Modoc, in the State of California, a distance of three hundred miles, as near as may be, including all the lands and estate, real and personal, rights of way, roadway, track, and tracks, together with all the superstructures, depots, depot grounds, station-houses, water-tanks, workshops, machine shops, machinery, side tracks, turn-out, turn-tables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, fuel, equipments, fixtures, tools, and all other property which might be necessarily used or ordinarily used in operating or repairing said railroad or anything connected therewith, including all of the said property then or thereafter to be constructed or completed, purchased, acquired, held, or owned by the said railroad company pertaining to said railroad, and all the corporate rights, privileges, and franchises of said company pertaining to said railroad, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interest, estate, property, possession, claim, and demand, in law or in equity, of said railroad company of, in, and to the same or any part or parcel thereof; to have and to hold the therein and above granted and described premises, estate, property, and franchises, with the appurtenances, unto the said Union Trust Company of New York and to its successors and assigns in trust for the use, security, and benefit of every person who should become or be from time to time holders of said bonds and coupons or any of them; that in and by said mortgage or trust deed it was provided that in case the said railroad company or its successors should well and truly pay or cause or procure to be paid unto the holders from time to time of said bonds and coupons the said sums of money agreed to be paid by the said bonds and interest coupons attached thereto, at the place and times and in the manner set forth in the said bonds and coupons, according to the tenor, intent, and meaning thereof, then the said mortgage or trust deed and all the property, estate, right, franchises, and privileges thereof should cease, determine, and be void; but if default should be made in the payment of said sums of money or any part thereof and the same should remain unpaid for six months from and after the time when the same should have been paid according to the tenor of said bonds or coupons, then the said Union Trust Company of New York, its successors or assigns, might enter into and upon all and singular the premises by the said mortgage or trust deed granted, and with or

without such entry sell and dispose of the same and all benefit and equity of redemption of said railroad company therein at public auction, and, as the attorney of said railroad company, to make and deliver to the purchaser a good and sufficient deed or deeds of conveyance for the same, and out of the money arising from such sale to retain the principal and interest then due on the said bonds and coupons, together with the costs and charges of advertisement and sale of the said premises and so forth, rendering the overplus of the purchase-money, if any, to the said railroad company.

That said mortgage or trust deed further provided that on any such sale whoever should bid off or become the owner of said
10 premises or any part thereof might be allowed to make payment therefor on the aforesaid bonds and coupons at *pro rata* valuation, regulated by the net amount of the price which should be realized on such sale, less such amount of cash as the said Union Trust Company of New York or its successors or assigns should require to be paid in view of being able to convey a good title free of all incumbrances and any commissions and charges of the said Union Trust Company of New York.

That it was further provided in and by the said mortgage or trust deed that nothing therein should be construed to deprive the said Union Trust Company of New York or its successors of the right to foreclose said mortgage or trust deed by sale, as therein provided, or by proceedings in any court of competent jurisdiction.

Your orators further show that said mortgage or trust deed was duly recorded in the several offices of the county recorders in the several counties of the States of Nevada and California wherein any part of the property therein described is situated.

11 Your orators further show that of the said three thousand bonds secured by the said mortgage the said Union Trust Company certified six hundred and no more.

That of said six hundred bonds so certified as aforesaid three hundred and ten bonds were negotiated and sold to your orators, — became and were the purchasers of the said 310 bonds, and paid a valuable consideration therefor, and your orators are now the owners and holders of the said 310 bonds and each of them.

Your orators further show that at the time of the purchase by your orators of the said 310 bonds and the delivery thereof to them, and in consideration of such purchase and delivery, your orators made and entered into an agreement with the said Nevada and Oregon Railroad Company, which said agreement was in tenor and effect as follows, to wit: That said railroad company would not issue, sell, transfer, or deliver to any person or persons any of the bonds of the said railroad company, except or in excess of the said 310 bonds sold, issued, and delivered to your orators as aforesaid, until 31 miles of the said railroad had been completed, and that the
12 said Nevada and Oregon railroad would not sell, issue, or deliver to any person or persons the bonds of the said company for any more or greater sum of money than $10,000.00 worth of said bonds to each mile of completed road, nor then until each mile of road was completed.

And your orators aver, on their information and belief, and so charge the fact to be, that the respondents and each of them had notice of the aforesaid agreement and terms thereof as last aforesaid pleaded; and your orators further show that, notwithstanding the aforesaid agreement between your orators and the said Nevada and Oregon Railroad Company, the said Nevada and Oregon Railroad Company, by and through persons assuming to be and acting as its officers, to wit, trustees, president, and secretary, did issue and cause to be issued and delivered to the respondents herein, in amounts as hereinafter more particularly stated, the said 290 of said six hundred bonds, well knowing at the time that no more than 31 miles of said railroad had been completed, and well knowing that the
13 bonds theretofore issued and delivered to your orators were equal to $10,000.00 for each completed mile of said road; and your orators aver that the said respondents, severally and in the amounts hereinafter specified, well knowing the aforesaid covenants and agreements and well knowing that no more than 31 miles of said road had been completed and well knowing the fact that 310 of said bonds had already been issued and delivered to your orators, received and accepted the said bonds; and your orators aver and charge the fact to be that the said 290 bonds were issued and delivered by the said Nevada and Oregon Railroad Company and were received by said respondents and each of them with the fraudulent intent and purpose to participate in and share with your orators the benefits of the said mortgage or trust deed and any sums of money realized from the sale of said mortgaged property thereunder.

Your orators further complain*ing*, and upon their information and belief *and* so charge the fact to be, that the said 290 bonds and each of them were issued and delivered by the said railroad
14 company and received by the said respondents and each of them in security for and in payment of the debts and liabilities of one Thomas Moore, the contractor and builder of said railroad, and of certain other individuals, and were not issued or delivered in security for or payment of the debts or liabilities of the said Nevada and Oregon Railroad Company; wherefore your orators aver that the issuance of said 290 bonds and each of them was, as against your orators, illegal, fraudulent, and void.

And your orators, further complaining, show that they are informed and believe and charge the fact to be that the said respondent, H. J. McMurray, has and claims to hold in his own right about fifty (50) of said 290 bonds, and in trust for some person *for* your orators unknown fifty-six (56) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe and charge the fact to be that the said respondent, Jerry Schooling, has and claims to hold in his own right about two (2) of said 290 bonds.

And your orators, further complaining, show that they are
15 informed and believe and charge the fact to be that the said respondent, W. R. Chamberlain, has and claims to hold in his own right about four (4) of said 290 bonds.

And your orators, further complaining, show that they are in-

formed and believe and charge the fact to be that the said respondents, —— —— and —— ——, copartners doing business in the firm name and style of Washoe Mill and Lumber Company, have and claim to hold in their own right about four (4) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe and charge the fact to be that the said respondent, First National Bank, has and claims to hold in its own right about thirty (30) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe and charge the fact to be that the said respondents, Oliver Lonkey and E. R. Smith, copartners doing business in the firm name and style of Lonkey and Smith, have and claim to hold in their own right about four (4) of said 290 bonds.

16 And your orators, further complaining, show that they are informed and believe and charge the fact to be that the said respondent, W. E. F. Deal, has and claims to hold in his own right about six (6) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, William Webster, has and claims to hold in his own right about eight (8) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, David Evans, has and claims to hold in his own right about two (2) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, A. Frazier, has and claims to hold in his own right about one (1) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, Clayton Belknap, has and claims to hold in his own right

17 about one (1) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, R. L. Fulton, has and claims to hold in his own right about one (1) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondent, Charles T. Bender, trustee, has and claims to hold as such trustee about sixty-one (61) of said 290 bonds.

And your orators, further complaining, show that they are informed and believe, and charge the fact to be, that the said respondents, Thomas Hymens and P. B. Comstock, late copartners doing business at Reno, Nevada, have and claim to hold in their own right about one (1) of said 290 bonds.

Your orators, further complaining, show that said bonds and the coupons attached thereto are transferrable by indorsement and delivery, and they believe that the said respondents and each of them will assign and transfer said bonds to an innocent purchaser for

18 value unless restrained by the order of the honorable the circuit court.

Your orators, further complaining, show that the said railroad company having made default in the conditions of said bonds and mortgages, and having failed and refused on, to wit, the first days of June and December, 1881, and on the first days of June and December, 1882, to pay the interest on said bonds or any of them — the said holders of said 310 bonds to which your orators elected to declare the principal of said bonds due and payable, and having so elected and declared the said Union Trust Company as trustee as aforesaid, to wit, on the — day of March, A. D. 1883, commenced an action in equity in the circuit court of the United States, ninth circuit and district of Nevada, to foreclose the said mortgage or trust deed and to sell the said property and to have the proceeds applied to the payment of the said 310 bonds of your orators and such other bonds, if any, as had been legally issued and were entitled to participate in the fund realized from the sale.

19 Your orators, further complaining, show that said suit is now pending in said court, and the writ of subpœna has issued therein and served upon the said Nevada and Oregon Railroad Company, respondent therein.

In consideration whereof and forasmuch as your orators have no adequate remedy at law in the premises and can obtain no relief otherwise than in equity, your orators therefore pray the aid of this honorable court that the writ of injunction issue, directed to the said respondents and each of them, enjoining them and each of them from assigning or transferring or otherwise disposing of said bonds or any of them pending this suit or the said suit wherein the said Union Trust Company of New York is complainant and the said Nevada and Oregon Railroad Company is respondent.

And your orators further pray the decree of this honorable court to the effect and purport that the said respondents nor any of them are entitled to participate in or share the money realized from the sale of the said road in the said suit of the Union Trust Com-

20 pany of New York against the Nevada and Oregon Railroad Company.

And your orators further pray that a subpœna of the United States of America, issuing out of and under the seal of this honorable court, issue, directed to the said respondents and each of them, commanding them and each of them to be and appear before this honorable court, then and there to answer all and singular the premises and perform and abide by the said injunction and decree as may be made against them in the premises.

MORAN BROTHERS,
Complainants.

ROB'T M. CLARKE,
Solicitor for Complainants.

UNITED STATES OF AMERICA, } ss:
County of Ormsby, State of Nevada, }

Robert M. Clarke, being first duly sworn, on his oath deposes and says that he is the solicitor for the complainants in the above-entitled cause; that he has read the foregoing bill and knows the con-
21 tents thereof, and the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true; that he makes this affidavit as the solicitor for complainants for the reason that said complainants reside out of the State of Nevada and are absent therefrom.

ROB'T M. CLARKE,
Solicitor for Complainants.

Subscribed & sworn to before me this 13th day of April, 1883.
[NOTARIAL SEAL.] JAMES R. JUDGE,
Notary Public, Ormsby Co., Nev.

Endorsed: In the circuit court of the U. S., ninth circuit, district of Nevada. Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners, *vs.* H. J. McMurray, Jerry Schooling, *et al.* Bill of complaint. Filed April 14, 1883. T. J. Edwards, clerk. R. M. Clarke, solicitor for compl'ts.

22 In United States Circuit Court for the District of Nevada.

The President of the United States of America sends greeting to H. J. McMurray, Jerry Schooling, W. R. Chamberlain, —— ——, and —— ——, copartners doing business in the firm name and style of Washoe Mill and Lumber Company; First National Bank, a corporation created and existing under and by virtue of the laws of the State of Nevada and of the United States of America, and doing business of banking at the town of Reno, in said State; Oliver Lonkey and E. R. Smith, copartners doing business in the firm name and style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, late copartners doing business at Reno, Nevada; Charles T. Bender, trustee, A. H. Manning, and —— Berry, late copartners in trade, at the town of Reno, Nevada, defendants:

You are hereby commanded that you personally be and
23 appear before the judges of our circuit court of the United States for the district of Nevada, in our said court, on or before the next rule day of said court occurring after twenty days from the issuance of this subpœna, at Carson City, Ormsby county, State and district of Nevada, to answer unto a bill of complaint exhibited against you in our said court by Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners in the business of banking in the city and State of New York, and to stand to, perform, and abide such order and decree as the court shall make in that behalf.

And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Washington, this 14th day of April, A. D. 1883, and of our Independence the one hundred and seventh.

Attest my hand and the seal of said circuit court, affixed at my office in Carson City, the day and year last aforesaid.

[L. S.] T. J. EDWARDS, *Clerk.*

24 *Memorandum Pursuant to Rule* 12, *Supreme Court of the United States.*

You, the said H. J. McMurray, Jerry Schooling, W. R. Chamberlain, —— ——, and —— ——, copartners doing business in the firm name and style of Washoe Mill and Lumber Company; First National Bank, a corporation created and existing under and by virtue of the laws of the State of Nevada and of the United States of America, and doing business of banking at the town of Reno, in said State; Oliver Lonkey and E. R. Smith, copartners doing business in the firm name and style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, late copartners doing business at Reno, Nevada; Charles T. Bender, trustee, A. H. Manning, and —— Berry, late copartners in trade at the town of Reno, Nevada, are to enter your appearance in the office of the clerk of said court, at Carson City aforesaid, on or before the next rule day of said court, occurring after twenty days from the time of the issuance of
25 this writ; otherwise the said bill will be taken *pro confesso.*

T. J. EDWARDS,
Clerk U. S. Circuit Court, Dist. Nevada.

Endorsed: Office of the U. S. marshal, district of Nevada. I hereby certify that I received the within subpœna in equity on the 15th day of April, A. D. 1883, and duly served the same on the defendants named therein by personally delivering a true copy thereof to Jerry Schooling, W. R. Chamberlain, C. A. Bragg, William Webster, Daniel Evans, A. Frazier, R. L. Fulton, Thomas Hymers, Charles T. Bender, A. H. Manning, and William F. Berry; also to Oliver Lonkey and E. R. Smith, of Verdi, all residents of Washoe county; P. B. Comstock, of Boca, in Nevada county, California, and W. E. F. Deal and Clayton Belknap, of Storey county, and by showing to each this original. As to defendant, H. J. McMurray, after using due diligence, he cannot be found in my district. P. S.
26 Corbett, U. S. marshal, dist. Nevada. Dated at Virginia, Nev., April 19th, 1883. U. S. cir. court, dist. Nevada. Charles Moran *et als. vs.* H. J. McMurray *et als.* Subpœna in equity. R. M. Clarke, solicitor. Filed Ap'l 20, 1883. T. J. Edwards, clerk.

Order.

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners Doing Business in the Firm Name and Style of Moran Bros., Complainants,

vs.

H. J. MCMURRAY, WASHOE MILL AND LUMBER COMPANY, JERRY Schooling, First National Bank of Nevada, A. H. Manning and —— Berry, Late Copartners Doing Business in the Firm Name and Style of Manning & Berry; W. R. Chamberlain, Oliver Lonkey, and E. R. Smith, Copartners Doing Business in the Firm
27 Name and Style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business Under the Firm Name and Style of Hymers and Comstock; H. J. McMurray, Trustee of ——, and C. T. Bender, Trustee of ——, Respondents.

It appearing that a bill in equity has been filed and writ of subpœna issued in the above-entitled cause praying, among other things, an injunction restraining the respondents and each of them from assigning, transferring, or delivering the bonds of the Nevada and Oregon Railroad Company; and it appearing from said bill that the complainants are entitled to have such relief, and it also appearing that a motion for injunction therein has been made to be heard on Monday, May 7th, 1883, at the meeting of court on said day, and it also appearing that notice of said motion has been duly given to the respondents, and it also appearing that there is danger of ir-
28 reparable injury to the complainants from delay:

Now, therefore, in consideration of the premises, it is considered and ordered that the respondents and each of them be, and they and each of them are hereby, restrained from assigning, transferring, or delivering any of the bonds of the Nevada and Oregon Railroad Company owned or held by them or either of them until the decision upon the said motion for injunction.

April 20, 1883.

G. M. SABIN,
U. S. Dist. Judge.

Marshal's Return.

OFFICE OF THE U. S. MARSHAL, DISTRICT OF NEVADA.

I hereby certify that I received the within order on the 21st day of April, A. D. 1883, and duly served the same on the defendants named therein by personally delivering a true copy thereof to Jerry Schooling, A. H. Manning, William F. Berry, W. R. Chamberlain, William Webster, A. Frazier, R. L. Fulton, Thomas Hymers, C. T.

Bender, and C. A. Bragg, all of the town of Reno and in
29 Washoe county; also to Oliver Lonkey and E. R. Smith, of Verdi, in Washoe county; to P. B. Comstock, at Boca, in Nevada county, California; to David Evans, at Antelope Station, in Sierra county, Cal'a, and to W. E. F. Deal and Clayton Belknap, of Virginia City, Storey county, and by showing to each this original. As to defendant, H. J. McMurray, after due diligence, he cannot be found in my district.

Dated at Virginia City, April 25th, A. D. 1883.

P. S. CORBETT,
U. S. Marshal, Dist. Nevada.

Endorsed: In the circuit court of the U. S., ninth circuit and district of Nevada. Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners, *vs.* H. J. McMurray, Jerry Schooling, *et al.* Order. Filed April 26, 1883. T. J. Edwards, clerk.

Notice of Application for Injunction.

30 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners Doing Business in the Firm Name and Style of Moran Bros., Complainants,

v.

H. J. MCMURRAY, WASHOE MILL AND LUMBER COMPANY, JERRY Schooling, First National Bank of Nevada, A. H. Manning and —— Berry, Late Copartners Doing Business in the Firm Name and Style of Manning & Berry; W. R. Chamberlain, Oliver Lonkey, and E. R. Smith, Copartners Doing Business in the Firm Name and Style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business under the Firm Name and Style of Hymers and Comstock; H. J. McMurray, Trustee of ——, and C. T. Bender, Trustee of ——, Respondents.

31 You, the respondents above named, and each of you are hereby notified that on Monday, the 7th day of May, A. D. 1883, at the meeting of court on that day or as soon thereafter as counsel can be heard, the above-named complainants will apply to the honorable the circuit court of the United States for the ninth circuit and district of Nevada for an injunction, pending the litigation, to enjoin you and each of you from assigning, transferring, or delivering all or any of the bonds of the Nevada and Oregon Railroad Company held or owned by you and which are the subject of litigation in the above-entitled cause and court; said application will be made upon the bill of complaint in said cause and evidence, documentary and oral, and affidavits which will be hereafter served.

ROB'T M. CLARKE,
Solicitor for Complainants.

Marshal's Return.

32 OFFICE OF THE U. S. MARSHAL,
DISTRICT OF NEVADA.

I hereby certify that I received the within notice of application for injunction on the 17th day of April, A. D. 1883, and duly served the same on the defendants named therein by personally delivering a true copy thereof to Jerry Schooling, W. R. Chamberlain, C. A. Bragg, William Webster, Daniel Evans, A. Frazier, R. L. Fulton, Thomas Hymers, Charles T. Bender, A. H. Manning, and William T. Berry; also to Oliver Lonkey and E. R. Smith, of Verdi, all residents of Washoe county; P. B. Comstock, of Boca, in Nevada county, California, and W. E. F. Deal and Clayton Belknap, of Storey county, and by showing to each this original. As to defendant, H. J. McMurray, after using due diligence, he cannot be found in my district.

Dated at Virginia, Nev., April 19th, 1883.

P. S. CORBETT,
U. S. Marshall, Dist. Nevada.

33 Endorsed: In the circuit court of the U. S., ninth circuit and district of Nevada. Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners, comp't-, *vs.* H. J. McMurray, Jerry Schooling, *et al.*, resp'ts. Notice of application for injunction. Filed April 20, 1883. T. J. Edwards, clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Complainants,

v.

H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtois, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name and Style of Washoe Mill and Lumber Company; First National Bank, a Corporation Created and Existing Under and by Virtue of the Laws of the State of Nevada and of the United States of America, and Doing Business of Banking at the Town of Reno, in said State;
34 Oliver Lonkey & E. R. Smith, Copartners Doing Business in the Firm Name of Lonkey & Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nevada; Charles T. Bender, Trustee, A. H. Manning and W. F. Berry, Late Copartners in Trade at the Town of Reno, Nevada, Defendants.

The clerk will please enter my appearance as solicitor for the defendants in the above-entitled cause.

Yours, &c.,

W. E. F. DEAL,
Solicitor for Defendants.

Dated May 7, 1883.

Endorsed: U. S. circuit court, ninth circuit, district of Nevada. Charles Moran *et al. v.* H. J. McMurray *et al.* Precept for appearance of def'ts. Filed May 7, 1883. T. J. Edwards, clerk.

35 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners in the Business of Banking in the City and State of New York, Complainants,

vs.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtors, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name and Style of the Washoe Mill and Lumber Company; First National Bank, a Corporation Created and Existing Under and by Virtue of the Laws of the State of Nevada; Oliver Lonkey and E. R. Smith, Copartners Doing Business Under the Firm Name and Style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nevada; Charles T. Bender, Trustee, A. H. Manning, and W. F. Berry, Late Copartners in Trade at Reno, Nevada.

36 The joint and several answer of H. J. McMurray, Jerry Schooling, W. R. Chamberlain, and Wm. Henry, Charles Curtors, David Martin, and H. W. Bragg, copartners doing business under the firm name and style of Washoe Mill and Lumber Company; First National Bank, a corporation organized and existing under the laws of the State of Nevada; Oliver Lonkey and E. R. Smith, copartners doing business under the firm name of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, late copartners; Charles T. Bender, trustee, A. H. Manning, and W. F. Berry, late copartners in trade at the town of Reno, to the bill of complaint of Charles Moran, Daniel Comyn Moran, and Amide D. Moran.

These defendants, now and at all times hereafter saving and reserving to themselves and each of themselves and each and all of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained,

37 for answer thereunto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto—these defendants, answering, say that they admit that the Nevada and Oregon Railroad Company, the corporation named in said bill of complaint, duly executed its series of three thousand bonds as alleged in said bill of complaint.

And, further answering, defendants admit that said corporation last named made, executed, and delivered to the Union Trust Company named in said bill of complaint its certain mortgage or deed

of trust, as in said bill of complaint alleged, but that said mortgage or deed of trust contained other conditions, agreements, and covenants than those and in addition to those set forth in said bill of complaint, which said other conditions, agreements, and covenants are fully set forth in said mortgage or deed of trust, a copy of which is hereunto annexed and made part hereof, marked Exhibit A.

These defendants, further answering, admit that of the said
38 three thousand bonds mentioned in said bill of complaint, secured by the said mortgage, the said Union Trust Company certified six hundred and no more; and these defendants admit that of said six hundred bonds so certified as aforesaid three hundred and ten bonds were negotiated and sold to said complainants, and said complainants were the purchasers of the said 310 bonds, and paid a valuable consideration therefor, and said complainants are now the owners and holders of said 310 bonds and each of them.

Defendants deny that at the time of the purchase by complainants of the said 310 bonds or the delivery thereof or any thereof to them or at any other time, or that in consideration of such purchase or delivery, or upon any other consideration, complainants made or entered into an agreement with the said Nevada and Oregon Railroad Company, or that said agreement was in tenor or effect that said railroad company would not issue, sell, transfer, or deliver to any person or persons any of the bonds of the said railroad company, except or in excess of the said 310 bonds sold, issued,
39 and delivered to said complainants, until 31 miles or any other number of miles of the said railroad had been completed, or that the said Nevada and Oregon Railroad Company would not sell, issue, or deliver to any person or persons the bonds of the said company for any sum or greater sum of money than $10,000.00 worth of said bonds to each mile of completed road, or then until each mile of road was completed.

And defendants allege that said railroad company did not issue any of said bonds except said 310 bonds until after the completion of said 31 miles of said road; and defendants deny that they or any of them had notice or any notice of the said agreement set forth in said bill of complaint or the terms of any such agreement as pleaded in said bill of complaint or otherwise.

And defendants allege that they are informed and believe, and upon such information and belief allege, that no agreement of any nature or kind whatever was ever made with said complainants or with any one by said Nevada and Oregon Railroad Company
40 with reference to said bonds mentioned in said bill of complaint, to wit, said 3,000 bonds of $1,000.00 each, except said mortgage or deed of trust in said bill of complaint and in this answer mentioned and set forth.

Defendants deny that said Nevada and Oregon Railroad Company, by or through persons assuming to be or acting as its officers, to wit, trustees, president, or secretary, did issue or cause to be issued and delivered to the defendants herein in the amounts or otherwise as in said bill of complaint stated the said 290 of said six hundred bonds, but defendants allege that said Nevada and Oregon Railroad

Company, through its duly constituted president, secretary, and board of trustees, did negotiate, sell, and deliver for valuable considerations to defendants herein, in amounts hereinafter set forth, 117 of said six hundred bonds which were of the series of three thousand bonds of $1,000 each, made, executed, and delivered to said Union Trust Company, as set forth in said bill of complaint, each and all which said 117 of said six hundred bonds were duly certified by said Union Trust Company to be one of the
41 bonds secured by the said mortgage or deed of trust; and defendants admit that they well knew that the bonds delivered to complainants were equal to $10,000 for each completed mile of said road; and defendants, further answering said bill of complaint, deny that they well knew or knew at all the covenants or agreements set forth in said bill of complaint alleged to have been made between complainants and said Nevada and Oregon Railroad Company, or that they well knew or knew at all that no more than 31 miles of said road had been completed, — received or accepted the said bonds or any thereof.

And defendants further deny that the said 290 bonds mentioned in said bill of complaint or said 117 bonds negotiated and sold to defendants as aforesaid, and as more particularly hereinafter set forth, or any thereof, were issued or delivered by the said Nevada and Oregon Railroad Company or were received by the said defendants or any of them with the fraudulent intent or purpose to participate in or share with complainants the benefits of the said
42 mortgage or trust deed or any sum of money realized from the sale of said mortgaged property thereunder, or with any fraudulent intent or purpose whatever, or that such purpose or intent was fraudulent; but, on the contrary, defendants allege that the said 117 bonds were delivered by said Nevada and Oregon Railroad Company and its officers for the purpose of negotiating and selling the same and were received by the defendants for the purpose of getting value for the consideration paid by them therefor, and for all legal intents and purposes the ownership of said bonds and the execution of said mortgage entitle them to.

Defendants, further answering said bill of complaint, deny that said 290 bonds or each or any of them, or said 117 bonds or any of them, were issued or delivered by said Nevada and Oregon Railroad Company or were received by defendants or any of them in security of or for the payment of the debts or liabilities of Thomas Moore, the contractor or builder of said railroad, or certain or any other person, except said Nevada and Oregon Railroad Company,
43 or were not issued or delivered as security for or in payment of the debts or liabilities of the said Nevada and Oregon Railroad Company, and defendants further deny that said 290 bonds or any of them, or said 117 bonds or any of them, were issued by said railroad company or received by defendants or either of them in payment of the debts or liabilities of said Thomas Moore or any other person, except such debts as said railroad company assumed and agreed to pay for valuable considerations paid to it by said Moore, which particular debts so paid are set forth specifically hereinafter in the paper marked Exhibit B and made part hereof.

And defendants further deny that the issuance of said 290 bonds or any of them, or said 117 bonds or any of them, was, against complainants or against any one, illegal, fraudulent, or void, but, on the contrary, they allege that each and all of said 117 bonds were legal, *bona fide*, honest, and valid, and were issued to defendants, as hereinafter set forth, for valuable considerations, and that
44 each and all of said defendants paid said Nevada and Oregon Railroad Company as much per dollar, if not more, than said complainants paid for their 310 bonds per dollar.

And defendants, further answering, deny that the said H. J. McMurray has or claims to have in his own right about 50 of said 290 bonds or, in trust for some person, 56 of said 290 bonds; but, on the contrary, defendants allege that said H. J. McMurray does own and claim to own 56 of said bonds in his own right; and defendants admit that said defendant, Jerry Schooling, holds and claims to own in his own right two of said 290 bonds, and allege that he does own and hold in his own right five of said bonds.

And defendants admit that said defendant, W. R. Chamberlain, has and claims to hold in his own right four of said bonds; and defendants deny that the Washoe Mill and Lumber Company have or claim to hold in their own right or otherwise four or any other number of said 290 bonds.

And defendants, further answering said bill of complaint,
45 admit that the First National Bank has and claims to hold in its own right as trustee 28 of said 290 bonds, but they deny that said bank has or claims to hold in its own right thirty or any other number of said 290 bonds, except said 28 bonds.

And defendants admit that said defendants, Oliver Lonkey and E. R. Smith, copartners in the firm name of Lonkey and Smith, have and claim to hold in their own right four of said 290 bonds.

And defendants deny that said defendant, W. E. F. Deal, has or claims to hold in his own right about six or any other number of said 290 bonds, and they allege that said W. E. F. Deal did own and hold five of said bonds—of said 290 bonds—but that prior to the commencement of this action he sold, assigned, and transferred and delivered, for a valuable consideration, all of said bonds, as follows: Four thereof to Catharine Winnie, a citizen of the State of Nevada, and one thereof to Homer S. King, a citizen of the State of California.

And defendants, further answering, deny that said defendant, William Webster, has or claims to hold in his own right
46 eight of said bonds or any other number, but they admit that prior to the service of the injunction upon him issued in this action he did own and hold eight of said bonds, and that prior to the service of said injunction upon him he sold, assigned, and transferred and delivered to William Wright, a citizen of Nevada, said eight bonds for a valuable consideration, who now owns and holds said eight bonds; and said defendants further admit that said defendant, David Evans, has and claims to hold two of said 290 bonds.

And said defendants admit that said defendant, A. Frazier, has

and claims to hold in his own right one of said 290 bonds; and defendants deny that the said defendant, Clayton Belknap, has or claims to hold in his own right one of said bonds, but they admit that Charles T. Bender, one of defendants, as trustee, holds one of said bonds for said Clayton Belknap, who is interested therein to the extent of $437.50 of its face value; and defendants deny that said defendant, R. L. Fulton, has or claims to hold in his own
47 right one of said 290 bonds, but they admit that said Charles T. Bender, trustee, holds one of said bonds in trust for said R. L. Fulton, who is interested therein to the extent of $428.75 of its face value; and defendants deny that Charles T. Bender has or claims to hold, as such trustee, about sixty-one of said 290 bonds or any other number other than four bonds, and that he holds said four bonds as trustee for defendant, W. E. F. Deal, to the extent of $625 of the face of one of said bonds; and as trustee for Clayton Belknap, defendant, to the extent of $437.50 of one of said bonds; and as trustee for R. L. Fulton to the extent of $428.75 of one of said bonds; and as trustee for defendant, William Webster, to the extent of $125 of the face of one of said bonds; and as trustee for Lonkey and Smith, defendants, to the extent of $330.88 of the face of one of said bonds; and as trustee for defendant, Jerry Schooling, to the extent of $354.65 of one of said bonds; and as trustee for defendants, Manning and Berry, to the extent of $526.37 of one of said bonds;
48 and for defendants, Hymyers and Comstock, one of said bonds to the extent of $586.25 thereof.

Defendants, further answering, deny that said defendants, Hymers and Comstock have, or claim to hold in their own right one or any other number of said 290 bonds; but they admit that Charles T. Bender, as trustee, holds one of said bonds for Hymers and Comstock to the extent of $586.25.

Defendants admit that said bonds and the coupons thereto attached are transferable by indorsement and delivery, and that said respondents and each of them will assign and transfer said bonds to an innocent purchaser for value unless restrained by the order of this honorable court, if they desire to do so, as they allege they have the right to do unless so restrained.

And defendants further answering, allege that, in addition to the 117 bonds of said 290 bonds held by said defendants, A. A. Watkins, a citizen of the State of California, has negotiated and received from said Nevada and Oregon Railroad Company thirteen of said
49 bonds for a valuable consideration, who now owns and holds the same.

That in addition thereto said Nevada and Oregon Railroad Company has sold and delivered, for a valuable consideration, to James F. Lewis, a citizen of Nevada, two of said bonds, who now owns and holds the same; that in addition thereto said Nevada and Oregon Railroad Company has sold and delivered, for a valuable consideration, to George H. Dana, a citizen of California, three of said bonds, who now owns and holds the same; that in addition thereto said Nevada and Oregon Railroad Company has sold and delivered to

William Wright, a citizen of Nevada, for a valuable consideration, five of said bonds, who now owns and holds the same.

That said Nevada and Oregon Railroad Company has sold and delivered to Robert H. Lindsay, a citizen of Nevada, seven of said bonds for a valuable consideration, who now owns and holds the same either in his own right or as trustee for A. J. Clark, Mrs. Agnes McClellan, administratrix of the estate of H. G. McClellan, deceased, and J. H. Parker, all of whom are citizens of Nevada.

50 And defendants and each of them elect to declare the principal of said 117 bonds issued to or for them as aforesaid, due and payable with the interest thereon, now due, and they pray that the action of said complainant, in so far as it is sought to enjoin or restrain them or either of them from disposing of their said bonds as it is their legal right to do, be dismissed, and that the restraining order heretofore issued may be dissolved.

And defendants pray that a decree be entered herein adjudging and decreeing that they are the legal owners of the bonds issued as aforesaid to them; that each and all of said 147 bonds issued and delivered as aforesaid by said Nevada and Oregon Railroad Company be declared valid and legal bonds of said company, and that the holders thereof be by the decree of this honorable court adjudged and decreed to participate in the fund realized from the sale under the foreclosure decree and sale prayed for in the action now pending in this court, mentioned in complainant's bill of complaint, wherein The Union Trust Company of New York is com-

51 plainant and The Nevada and Oregon Railroad Company is defendant.

And defendants pray for all such other and further relief as may to the court seem meet and equitable in the premises.

And your petitioners will ever pray.

W. E. F. DEAL,
Solicitor for Defendants.

WM. WEBSTER, *Of Counsel.*

UNITED STATES OF AMERICA, }
District of Nevada, } *ss:*

And now come W. E. F. Deal, William Webster, David Evans, C. T. Bender, W. T. Berry, of Manning & Berry; D. W. Balch, George A. King, C. A. Bragg, —, being each first duly sworn, deposes and says that he has heard the foregoing answer read and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and that as to those matters he verily believes it to be true; and said W. E. F. Deal deposes and says that he makes this affidavit in his own behalf and on behalf of Oliver Lonkey and E. R. Smith, as

52 their attorney, because said Oliver Lonkey and E. R. Smith have authorized him to make the same as their attorney, and they are now out of the said district of Nevada; and William Webster deposes and says that he makes this affidavit on his own behalf and as the duly authorized attorney on behalf of Jerry Schooling

and Clayton Belknap; and said D. W. Balch makes this affidavit as the duly authorized agent of H. J. McMurray, and because said H. J. McMurray is now out of said district of Nevada; and George A. King makes this affidavit on behalf of W. R. Chamberlain, whose agent for this purpose he is; and D. W. Balch deposes and says that he makes this affidavit also on behalf of A. Fraser, whose agent he is; and C. A. Bragg says he makes this affidavit on behalf of Washoe Mill and Lumber Company, because he is so authorized to do, and William Webster says he also makes this affidavit on behalf of the First National Bank and C. T. Bender, because he is authorized so to do.

W. E. F. DEAL.
W. WEBSTER.
53 D. W. BALCH.
GEO. A. KING.
C. A. BRAGG.
W. T. BERRY.
DAVID EVANS.

Subscribed and sworn to before me this seventh day of May, 1883.
T. J. EDWARDS,
Clerk & Com'r U. S. Cir. Court, Dist. Nevada.

EXHIBIT "A."

This indenture, made and entered into this twenty-fifth day of April, A. D. 1881, by and between the Nevada and Oregon Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of Nevada, party of the first part, and The Union Trust Company of New York, party of the second party, witnesseth:

Whereas the said party of the first — desires to make and complete the construction and equipment of a proposed railroad running and to be run from a point at or near the town of Aurora, in the
54 county of Esmeralda, in the State of Nevada, to a point in the State of California at or near the boundary line between said State of California and the State of Oregon, and where said boundary line between said States intersects the eastern shore of Goose Lake, running through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties of Sierra, Lassen, and Modoc, in the State of California, to a point in said county of Modoc, in said State, at or near the boundary line between said State and the State of Oregon, and where said boundary line between said States intersects the eastern shore of Goose Lake, a distance of about three hundred miles; and to that end the stockholders of said corporation, at a meeting thereof duly held, and the directors thereof, also at a meeting duly held, have authorized and directed the issue of its bonds to be secured by a first mortgage upon said road and its rolling stock, fixtures, and franchises as now existing, and which may hereafter be acquired, in manner and form and with the conditions, provisos, covenants, and

obligations hereafter set forth, said bonds to be substantially
55 in the following form and containing the following terms, to wit:

STATE OF NEVADA.

First-Mortgage Gold 8 Per Cent. Bond.

Know all men by these presents that the Nevada and Oregon Railroad Company, a corporation duly incorporated under the laws of the State of Nevada, acknowledges itself to be indebted for moneys advanced to its use, and promises to pay to the holder hereof one thousand dollars in gold coin of the United States of America of the present standard and weight on the first day of June, which will be in the year 1930, at the city of New York, with interest thereon at the rate of eight per cent. per annum, and to be paid semi-annually on the first days of June and December in each year on the presentation of the annexed coupons as they respectively become due, at the city of New York, in gold coin of the United States of like standard and weight; for which payments, well and truly to be made, the said corporation binds itself and its successors, and doth hereby further agree that this obligation and all rights and
56 benefits arising therefrom may be transferred by general or special endorsement or by delivery, and hereby waives all benefit or exception of advantage which it is or may be entitled to from valuation, appraisement, attachment, redemption, or stay laws.

And it is hereby expressly agreed that should any default be made in the payment of the said interest or any part thereof on any day whereon the same is made payable as aforesaid, and should the same remain unpaid and in arrear for the space of six months, then and from thenceforth—that is to say, after the expiration of the said six months—the aforesaid principal sum of one thousand dollars, with all arrearage of interest thereon, shall, at the option of the holder hereof or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment of said principal may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

This bond is one of a series of three thousand of like amount, date, tenor, and effect, numbered from 1 to 3,000, inclu-
57 sive, amounting in the aggregate to three million dollars ($3,000,000), secured by deed of trust or mortgage to the Union Trust Company of New York as trustee, bearing date the twenty-fifth day of April, eighteen hundred and eighty-one, on all the estate, real and personal, and franchises then owned and to be thereafter acquired in the States of Nevada and California by said corporation.

This bond shall have no force or effect until certified by the trustees to be one of the bonds secured by the said mortgage.

In testimony whereof the said corporation has hereunto caused to be affixed its corporate seal and these presents to be subscribed by its president and treasurer this twenty-fifth day of April, in the year one thousand eight hundred and eighty-one.

Coupons for interest to be attached to said bonds substantially in the following form, to wit:

On the first day of ——, one thousand — hundred and —, the Nevada and Oregon Railroad Company will pay the bearer, at the city of New York, forty dollars in United States gold coin of the present standard and weight for six months' interest on bond No. —.

58 April 25th, 1881.

—— ——, *Treasurer.*

Now, therefore, this indenture witnesseth: That the said Nevada and Oregon Railroad Company, party hereto of the first part, for the better securing of the payment of the said sums of money mentioned in the said bonds or obligations, and said interest thereon and coupons thereto attached, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to it in hand paid by the said party of the second part at and before the sealing and delivery of these presents—the receipt whereof is hereby acknowledged—has granted, bargained, sold, aliened, assigned, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm, unto the party of the second part and to its successors and assigns forever all the following property, franchises, and estate, real and personal, now or hereafter constructed, purchased, acquired, held in possession, or owned by said company, to wit: All the railroad line of the said company, commencing at or near the town

59 of Aurora, in the State of Nevada, and running thence to a point in the State of California at or near the boundary line between said State of California and the State of Oregon, and where said boundary line between said States intersects the eastern shore of Goose Lake, and extending through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties of Sierra, Lassen, and Modoc, in the State of California, a distance of three hundred miles, as near as may be, including all the lands and estate, real and personal, rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station-houses, water-tanks, workshops, machine shops, machinery, side tracks, turn-outs, turn-tables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, fuel, equipments, fixtures, tools, and all other property which may be necessarily used or ordinarily used in operating or repairing said railroad or anything connected therewith, including all of the said property which is now or may hereafter, in whole or in part, be

60 constructed or completed, purchased, acquired, held or owned by the said company pertaining to said railroad, and all the corporate rights, privileges, and franchises of said company pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interest, estate, property, possession, claim, and demand,

in law or in equity, of the said party of the first part, of, in, and to the same or any part or parcel thereof; to have and to hold the above granted and described premises, estate, property, and franchises, with the appurtenances, unto the said party of the second part and to its successors and assigns in trust for the use, security, and benefit of every person or corporation who shall become or be from time to time holders of said bonds and coupons or any of them: Provided always, nevertheless, and these presents are upon the express condition, That if the said party o the
61 first part or its successors shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds and coupons and each and every of them the said sums of money to be paid by the said bonds and the interest coupons attached thereto at the place and times and in the manner set forth in the said bonds and coupons, according to the tenor, intent, and meaning thereof, then these presents and all the property, estate, right, franchises, and privileges herein and hereby granted and conveyed shall cease, determine, and be void; and if default shall be made in the payment of the said sums of money specified in said bonds or coupons or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds or coupons, then the said party of the second part, its successors and assigns, its agents or servants, in that behalf may enter into and upon and take possession of all or, in their discretion,
62 any part of the said premises and property hereinbefore described or intended so to be and work and operate the said railroad and receive the income and receipts and profits thereof, and out of the same pay—

First. The expenses of running and operating the same, including all taxes and annual legal charges, and including therein such reasonable compensation as it or they may allow to the several persons employed and engaged in the running and superintendence of the same, and a reasonable compensation to the party of the second part, its successors and assigns.

Second. The expenses of repairing and renewing the said road, appurtenances, locomotives, and the rolling stock thereof, and all other reasonable and proper charges and expenses necessary for the care and management thereof, including all reasonable and proper betterments, replacements, additions, and extensions.

Third. To pay, as far as the same will suffice, the interest and, when due, the principal of said bonds.

But nothing hereinbefore or hereinafter contained shall be
63 construed to deprive the said party of the second part or its successors of the right to foreclose this mortgage by sale, as hereinafter provided, or by proceedings in any court of competent jurisdiction.

And, further, if default shall be made in the payment of the said bonds and coupons above mentioned or any of them that then and from thenceforth it shall be lawful for the said party of the second part, its successors and assigns, to enter into and upon all and sin-

gular the premises hereby granted or intended so to be, and with or without such entry to sell and dispose of the same and all benefit and equity of redemption of the said party of the first part therein at public auction, and, as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, and out of the money arising from such sale to retain

64 the principal and interest which shall then be due on the said bonds and coupons, together with the costs and charges of advertisement and sale of the said premises and a reasonable compensation, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part and against all other persons claiming or to claim the premises or any part thereof by, from, or under it.

But, on any such sale, whoever shall bid off and become the owner of the said premises or any part thereof may be allowed to make payment therefor by the aforesaid bonds and coupons at a *pro rata* valuation regulated by the net amount of the price which shall be realized on such sale, less such an amount of cash, however, as the said party of the second part or its successors or assigns shall require to be paid in view of being able to convey a good title, free of all incumbrances, charges, and expenses, and for their own commissions and charges.

65 And it is hereby agreed between the parties to this indenture that in the meantime, and until default shall be made in the payment of the interest or principal of the said bonds or coupons or of some of them or some part thereof, or in some of the covenants or agreements to be kept, observed, or fulfilled by the said party of the first part, it shall be lawful for the said party of the first part peacefully and quietly to have, hold, use, possess, and enjoy the said premises, with the appurtenances, and to receive the incomes, issues, and profits thereof to its own use and benefit, without any hindrance or interruption or disturbance whatsoever of or from the party of the second part, its successors or assigns, or any other person whatever lawfully claiming or to claim the same by, from, or under them or any of them.

And the said party of the first part hereby agrees and covenants to and with the said party of the second part and its successors and assigns that it will pay and keep down all ordinary and extraordinary taxes, assessments, and other public burdens and charges

66 which shall or may be imposed upon the premises herein described and hereby conveyed, and every part thereof.

And the said party of the second part or its successors and assigns or any one or more of the holders of said bonds may, in case of the default of the said party of the first part in this behalf, pay and discharge the same and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to the said bonds, or to

which said bonds may be subject or subordinate, and for all payments thus made the parties making the same shall be allowed interest thereon at the rate of eight per cent per annum, and such payments, with the interest thereon, shall be, and are hereby, secured to them by these presents and declared to be payable and collectable in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the second part, its successors and assigns, upon demand in trust for the party or parties paying the same,
67 and may be paid out of the proceeds of the sale of said premises hereinbefore authorized.

And the said party of the first part further covenants and agrees to and with the said party of the second part and its successors and assigns that it will at any and all times hereafter, upon the request of the said party of the second part or its successors and assigns, execute, acknowledge, and deliver to the said party of the second part and its successors and assigns all and every such further necessary and reasonable conveyances and assurances in the law of the said premises or any part thereof as may by the party of the second part or its successors and assigns be reasonably devised or required for more fully carrying into effect the objects of this conveyance; and the said party of the second part and its successors and assigns shall be entitled to receive a just and proper compensation for all services rendered by them in the execution of the aforesaid trusts and powers, and the same shall be deemed to be secured hereby; and it is hereby stipulated and agreed that the said
68 party of the second part and its successors in said trust shall not be responsible for the acts or omissions of any agent or agents employed by it in any manner in and about the execution of the trust hereby created, when such agent or agents are selected with reasonable discretion; and it is further witnessed by these presents that the said party of the first part, its successors or successor, in consideration of the premises and the value received on the issue of said bonds, covenants to and hereby does waive all benefit or exception of advantage which it is or at any time hereafter may become entitled to from valuation, appraisement, attachment, redemption, or stay laws of any and all kinds.

In witness whereof the said Nevada and Oregon Railroad Company has hereto affixed its corporate seal and cause- these presents to be attested by its president and secretary, and the said party of the second part has caused its seal to be affixed and these presents to be signed by its president the day and year above written.

NEVADA AND OREGON RAILROAD COMPANY,

[SEAL.] By GEO. L. WOODS, *President.*

69 By S. C. SCOVILLE, *Secretary.*

UNION TRUST COMPANY OF NEW YORK,

[SEAL.] By EDW. KING, *Pres't.*

Sealed and delivered in the presence of—
W. BERGMAN.
H. A. CLANSON.

NOTE.—W. Bergman, a practicing physician of Reno; H. A. Clanson, ass't manager Chamberlain's Depot Hotel, Reno.

STATE OF NEVADA, }
County of Washoe, } *ss:*

On this second day of May, A. D. one thousand eight hundred and eighty-one, personally appeared before me, H. L. Fish, a notary public in and for the county of Washoe and State of Nevada, Geo. L. Woods, president, and S. C. Scoville, secretary of the Nevada and Oregon Railroad Company, a corporation incorporated, to wit, on the 25th day of April, 1881, to me personally known to be the persons whose names are subscribed to the foregoing instrument as the president and secretary of said company, who each acknowl-
70 edged to me that he executed the same in his official capacity, for and on behalf and in the name of said company, as its free and voluntary act and deed for the uses and purposes therein mentioned and in pursuance of a resolution of the board of directors of said company directing such mortgage to be executed by signing the same as president and secretary and *and* affixing thereto its corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] H. L. FISH,
Notary Public.

Original mortgage has attached a certificate from secretary of state certifying H. L. Fish a duly appointed notary public.

STATE OF NEVADA, *ss:*

SECRETARY'S OFFICE.

I, Jasper Babcock, secretary of state of the State of Nevada, do hereby certify that H. L. Fish now is a notary public in and for the county of Washoe, in the State aforesaid, duly commissioned
71 and qualified according to law and duly authorized by law to take and certify acknowledgements and affidavits, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the great seal of State. Done at office, in Carson City, Nevada, on this second day of May, A. D. 1881.

[L. S.] JASPER BABCOCK,
Secretary of State,
By JAS. G. CHESLEY, *Deputy.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, a commissioner duly appointed by the Governor of the State of Nevada to take the acknowledgment and proof

of deeds and other instruments to be recorded in said State of Nevada, do hereby certify that Edward King, president, who is personally known to me to be such officer and to be the identical person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as the
72 president of the Union Trust Company of New York, he signed, sealed, and delivered the foregoing instrument with the corporate seal of the said company thereto affixed, as the free and voluntary act and deed of the said company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 10th day of May, A. D. 1881.

CHARLES NETTLETON, [SEAL.]
Commissioner for Nevada in New York,
117 *Broadway, N. Y. City.*

Endorsed: Nevada and Oregon Railroad Company to The Union Trust Company of New York. Mortgage. NOTE.—Nine of these instruments were executed; eight sent to N. Y., one retained by Thos. Moore. Forwarded by T. M., registered mail, May 3d, 1881. Ret'd from N. Y. May 19th. Returned to N. Y. June 2d. Office copy. April 25th, 1881.

11.25. Filed for record, at request of S. C. Scoville, May 19th, A. D. 1881, at 45 min. past 10 p. m., and recorded on pages —, in Book G of Mortgages, records of Washoe county, Nevada.

JNO. B. WILLIAMS,
73 *Co. Recorder & ex Officio Recorder of Roop County, Nevada.*

9.00. Recorded, at the request of S. C. Scoville, May 21st, 1881, at 30 min. past 7 o'clock a. m., in Book B of Lassen County, Cal., Record of Mortgages, at pages 572, '3, '4, '5, '6, '7, '8, and '9.

W. P. HALL, *Recorder.*

9.00. Recorded, at the request of S. C. Scoville, May 23d, 1881, at 8 min. past 6 o'clock a. m., in Book 2 of Mortgages, at pages 220, '1, '2, '3, '4, '5, '6, '7, '8, records of Modoc county, Cala.

GEO. W. WELCH, *Recorder.*

$7.30. Recorded in the office of the county recorder of Sierra county, Cal., May 26th, A. D. 1881, at 4 o'clock p. m., in Liber H of Mortgages, at page 323.

H. STRANGE, *Recorder.*

Filed May 28, 1881, at the request of S. C. Scoville, at 30 min. past 4 o'clock p. m., in vol. 21, pages 415, 416, 417, 418, 419, 420, 421, 422, & 423.

FRED. D. TURNER,
Co. Recorder Ormsby County, Nevada.

Filed for record May 28, 1881, 30 min. past 6 p. m., in Book "C" of Mortgages, pages 437, 438, 439, 440, 441, 442, 443, 444, 444.

74 J. F. LONGABAUGH,
County Recorder.

Recorded, at the request of C. A. Bragg, May 30th, 1881, at 10 minutes past 9 o'clock a. m., in Book "B" of Mortgages, pages 323, '4, '5, '6, '7, '8, '9, '30, '31, '32, '33, records of Esmeralda county, Nevada.

H. M. BARTON,
County Recorder.

Recorder's fees, $13.25. Paid.

EXHIBIT B.

Debts of Thomas Moore, late contractor, assumed by the Nevada and Oregon Railroad Company.

Manning & Berry	$11,963 70
Manning & Berry	832 73
C. A. Bragg & Co.	1,975 55
H. J. McMurray	22,961 66
H. J. McMurray	3,456 42
H. J. McMurray	5,506 75
W. Webster	1,500 00
W. E. F. Deal	1,000 00
A. J. Clark	3,682 46
D. Evans	1,440 00
Hymers & Comstock	469 00

75 Endorsed: U. S. cir. court, dist. Nevada. Moran Bros. *vs.* H. J. McMurray *et als.* Answer. Filed May 7, 1883. T. J. Edwards, clerk. W. E. F. Deal, solicitor. Wm. Webster, of counsel.

76 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners in the Business of Banking in the City and State of New York, Complainants,

vs.

H. J. MCMURRAY *et al.*

To the honorable the justices of the circuit court of the United States, ninth circuit and district of Nevada:

Having first obtained leave of court to amend their bill of complaint heretofore brought and filed, for amendment to such bill of complaint aver and show and propose as follows, to wit: Insert after "Nevada," line —, page 2, the following: And James F. Lewis, a citizen of the State of Nevada, and George A. Dana, a citizen of the

State of California, and William Wright, a citizen of the State of Nevada, and Robert H. Lindsay, a citizen of the State of Nevada, and A. A. Watkins, a citizen of the State of California, and
77 the Nevada and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, a citizen of said State of Nevada.

Amend by inserting after "Nevada," line —, page 2, the following, to wit: "Except the said George H. Dana and the said A. A. Watkins, who are citizens of the State of California." Insert after "bonds," line 20, page 20, the following, to wit:

That they are informed and believe, and upon such information and belief so charge the fact to be, that the said James F. Lewis, a citizen of the State of Nevada, has, holds, and claims two of said 290 bonds, and as such holder claims the right to transfer the same.

And the said defendant, George H. Dana, a citizen of the State of California, has and claims to hold in his own right three of said 290 bonds, and as such holder claims the right to transfer the same.

That the said defendant, William Wright, a citizen of the State of Nevada, has and claims to hold in his own right five of said 290 bonds, and as such holder claims the right to transfer
78 the same.

That the said defendant, Robert H. Lindsay, a citizen of the State of Nevada, has and claims to hold in his own right or as trustee for A. J. Clark, Agnes McLellan, administratrix of the estate of H. G. McLellan, and J. H. Parker, all of whom are citizens of the State of Nevada, seven of said 290 bonds, and as such holder claims the right to transfer the same.

That the said defendant, A. A. Watkins, a citizen of the State of California, has and claims to hold in his own right thirteen of said 290 bonds, and as such holder claims the right to transfer the same.

Your orators, further complaining, aver and show that they are informed and believe and upon such information and belief charge the fact to be that the said Nevada and Oregon railroad has not sold, transferred, issued, or delivered all of said 290 bonds, but has yet a large number thereof still in its possession, which said bonds the said Nevada and Oregon Railroad Company claim the
79 right to issue, sell, and deliver in payment of its debts or to purchasers for value, notwithstanding the said agreement between the said complainants and the said Nevada and Oregon Railroad Company limiting the right of said company to issue bonds to $10,000.00 *dollars* for each completed mile of said road and notwithstanding the fact that but 31 miles of said road are completed and notwithstanding the fact that 310 of said bonds were issued to and are now held by complainants.

And your orators, further complaining, avers that the said Nevada and Oregon Railroad Company threaten to and, unless restrained by the injunction of this court, will issue part or all of said bonds, and will thereby impair your orators' right, diminish their security, and withdraw from them the proceeds of the sale of said mortgaged premises and which they are of right entitled to have.

Insert after the word "stated," line 1, page 15, the following: "A large number of."

Strike out the figures "290," line 23, page 15.

Strike out the figures "290," line 9, page 16, and in line 24, page 16.

80 MORAN BROS.,
Complainants.

ROB'T M. CLARKE,
Solicitor for Complainants.

UNITED STATES OF AMERICA, }
County of Ormsby, State of Nevada, } *ss:*

Rob't M. Clarke, being first duly sworn, on his oath deposes and says that he is the solicitor for the complainants in the above-entitled cause; that he has read the foregoing bill and knows the contents thereof, and the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true; that he makes this affidavit as solicitor for complainants for the reason that said complainants reside out of the State of Nevada and are absent therefrom.

ROB'T M. CLARKE.

Subscribed and sworn to before me this 12th day of May, A. D. 1883.

[SEAL.] WILLIS G. CLARKE,
Notary Public, Ormsby County, Nevada.

81 Endorsed: In the circuit court of the U. S., ninth circuit and district of Nevada. Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners, *vs.* H. J. McMurray *et al.* Amendment to bill of complaint. Filed May 14, 1883. T. J. Edwards, clerk.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Complainants,
vs.
H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtors, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill & Lumber Co.; First National Bank, Oliver Lonkey, E. R. Smith, W. E. F. Deal, William Webster, David Evans, A. Fraser, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock; Charles T. Bender, Trustee; N. H. Manning, W. F. Perry, and James F. Lewis; George H. Dana, Robert H. Lindsay, A. A. Watkins,
82 Homer S. King, Catherine Winnie, & William Wright, and The Nevada & Oregon Railroad Company, Defendants.

And now come the defendants in the above-entitled action named,

to wit, James F. Lewis, George H. Dana, Robert H. Lindsay, A. A. Watkins, Homer J. King, Catherine Winnie, and William Wright, and The Nevada and Oregon Railroad Company.

The Joint and Several Answer of the said Def'ts to the Bill of Complaint of said Complainants.

These defendants, now and at all times hereafter, saving and reserving to themselves and each of themselves and each and all of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say that the said
83 Nevada and Oregon Railroad Company, the corporation named in said bill of complaint, duly executed its series of three thousand bonds as alleged in said bill of complaint.

Def'ts deny that at the time of the purchase by complainants of the said 310 bonds mentioned in said bill of complaint or at any other time, or that in consideration of such purchase or delivery or upon any other consideration, complainants made or entered into an agreement with the said Nevada and Oregon Railroad Company or that said agreement was in tenor or effect that said railroad company would not issue, sell, transfer, or deliver to any person or persons any of the bonds of the said railroad company, except or in excess of the said 310 bonds sold, issued, and delivered to said complainants, until 31 miles or any other number of miles of the said railroad had been completed, or that the said Nevada and Oregon Railroad Company would not sell, issue, or deliver to any person or persons the bonds of said company for any more or greater sum
84 of money than $10,000.00 worth of said bonds to each mile of completed road, or then until each mile of said road was completed.

And def'ts allege that said railroad company did not issue any of said bonds, except said 310 bonds, until after the completion of said 31 miles of said road.

And def'ts deny that they or any of them had any notice of the said agreement set forth in said bill of complaint or the terms of any such agreement as pleaded in said bill of complaint or otherwise.

And def'ts allege that no agreement of any nature or kind whatever was ever made with said complainants or with any one by said Nevada and Oregon Railroad Company with reference to said bonds mentioned in said bill of complaint, to wit, said 3,000 bonds of $1,000 each, except said mortgage or deed of trust in said bill of complaint and in this answer mentioned and set forth.

Def'ts deny that said Nevada and Oregon Railroad Company, by or through persons assuming to be or acting as its officers, to wit, trustees, president, or secretary, did issue or cause to be
85 issued and delivered to the defendants herein in the amounts or otherwise as in said bill of complaint stated the said 290

of said six hundred bonds, but def'ts allege that said Nevada and Oregon Railroad Company, through its duly constituted president, secretary, and board of trustees, did negotiate, sell, and deliver for valuable considerations to defendants herein and in said action, in amounts hereinafter set forth and set forth in the answer of the other of said def'ts, 147 of said six hundred bonds, which were of the series of three thousand bonds of $1,000 each made, executed, and delivered to said Union Trust Company as set forth in said bill of complaint, each and all which said 147 of said six hundred bonds were duly certified by said Union Trust Company, to be one of the bonds secured by the said mortgage or deed of trust.

And def'ts admit that they well knew that the bonds delivered to complainants were equal to $10,000 for each completed mile of said road.

86 And defendants, further answering said bill of complaint, deny that they well knew or knew at all the covenants or agreements set forth in said bill of complaint alleged to have been made between complainants and said Nevada and Oregon Railroad Company, or that they well knew or knew at all that no more than 31 miles of said road had been completed, received or accepted the said bonds or any thereof.

And def'ts further deny that the said 290 bonds mentioned in said bill of complaint or said 147 bonds negotiated and sold to def'ts in this action as aforesaid, and as more particularly hereinafter set forth, or any thereof were issued or delivered by the said Nevada and Oregon Railroad Company or were received by said def'ts or any of them with the fraudulent intent or purpose to participate in or share with complainants the benefits of the said mortgage or trust deed or any sum of money realized from the sale of said mortgaged property thereunder or with any fraudulent intent or purpose whatever, or that such purpose or intent was fraudulent;

87 but, on the contrary, def'ts allege that the said 147 bonds were delivered by said Nevada and Oregon Railroad Company and its officers for the purpose of negotiating and selling the same and were received by the codef'ts of said company for the purpose of getting value for the considerations paid by them therefore and for all legal intents and purposes the ownership of said bonds and the execution of said mortgage entitle them to.

Def'ts, further answering said bill of complaint, deny that said 290 bonds or each or any of them or said 147 bonds or any of them were issued or delivered by said Nevada and Oregon Railroad Company or were received by def'ts or any of them in security of or for the payment of the debts or liabilities of Thomas Moore, the contractor or builder of said railroad, or certain or any other person except said Nevada and Oregon Railroad Company, or were not issued or delivered in security for or in payment of the debts or liabilities of the said Nevada and Oregon Railroad Company; and

88 def'ts further deny that said 290 bonds or any of them or said 147 bonds or any of them were issued by said railroad company or received by def'ts or either of them in payment of the debts or liabilities of said Thomas Moore or any other

person except such debts as said railroad company assumed and agreed to pay for valuable considerations paid to it by said Moore, which particular debts so paid *and* set forth specifically hereinafter in the paper marked Exhibit B and made part hereof.

And def'ts further deny that the issuance of said 290 bonds or any of them or said 147 bonds or any of them was against complainants or against any one illegal, fraudulent, or void; but, on the contrary, they allege that each and all of said 147 bonds were legal, *bona fide*, honest, and valid, and were issued to def'ts, as hereinafter set forth and as set forth in the answer of said other def'ts, for valuable considerations, and that each and all of said def'ts paid said Nevada and Oregon Railroad Company as much per dollar, if not more, than said complainants paid for their 310 bonds per dollar; and

the said Homer S. King & Catherine Winnie come and ask
89 to be made parties def'ts to this action.

And, for further answer to said bill of complaint, def'ts admit that said George H. Dana has and claims to hold in his own right three of said 290 bonds, and as such holder claims the right to transfer the same; and def'ts admit that said def't, William Wright, has and claims to hold in his own right five of said 290 bonds, and as such holder claims the right to transfer the same.

And def'ts admit that said Robert H. Lindsay has and claims to hold in his own right as trustee for A. J. Clarke, Agnes McLellan, administratrix of the estate of H. G. McClelland, and J. H. Parker seven of said 290 bonds, and as such holder claims the right to transfer the same; and def'ts admit that said A. A. Watkins has and claims to hold in his own right 13 of said 290 bonds, and as such holder claims the right to transfer the same; and def'ts admit that said James F. Lewis has, holds, and claims 2 of said bonds, and as such holder claims the right to transfer the same.

And, for a further answer to said bill of complaint, def'ts
90 all-ge that said Catherine Winnie owns and holds four of said 290 bonds, and said Homer S. King owns and holds 1 of said 290 bonds, and that said Catherine Winnie is a citizen of Nevada and said Homer S. King a citizen of California.

Def'ts admit that the said Nevada and Oregon Railway Company has not sold, transferred, issued, or delivered all of said 290 bonds, but has a large number thereof still in its possession, which said bonds said company claims the right to issue, sell, and deliver in payment of its debts or to purchasers for value, but they deny that any agreement whatever was ever made between the said complainants and the said company limiting the right of said company to issue bonds to $10,000.00 or any other sum for each completed mile of said road.

And def'ts deny that said company has issued any of its said bonds to any one for the payment of any of its debts, save and except such debts as were contracted in the building of said road & its necessary expenses. Def'ts deny that said company threaten to or un-
91 less restrained by the injunction of this court will issue part or all of said bonds, or that it will issue any thereof except to build said road or to pay debts incurred for the building thereof,

or that it will thereby impair complainants' right or diminish their security or withdraw from them the proceeds of the sale of said mortgaged premises, or that complainants are of right entitled to have; but, on the contrary, def'ts allege that if said company continues the construction of said road beyond the point to which it is now built, in which event only will said company issue any more of said bonds, the said security of complainants will be preserved and the value of said road be greatly enhanced and the traffic over said road and profits of operating the same more than doubled.

Def'ts further allege that the contractor, Thomas Moore, named in said complaint, failed to comply with his contract and failed to build the Reno section of said road, and said company completed said section of said road and obtained the means and credit
92 to complete said Reno Division by the issuance and delivery to the def'ts named in said complaint and to these codefendants of said company of the 147 bonds of said 290 bonds, and that it now holds and retains the balance of said 290 bonds for no other purpose than to continue the construction of said road.

And def'ts further allege that none of said def'ts knew or had the means of knowing or had notice of any agreement whatever between complainants and said company except the agreement contained in said mortgage, and they and each of them took and received said bonds for a valuable consideration, relying upon the conditions of said mortgage and the certificate of said Union Trust Company or its president to each of said bonds so delivered to them that it was one of the series of bonds set forth and described in said mortgage; that all of said 310 bonds held and owned by said complainants were sold and delivered to them by said contractor, Thomas Moore, who received them from said company as part payment for the building of said Reno Division of said road, and
93 that the failure of said contractor to build said Reno Division compelled said company to build the same, and that but for the completion of said Reno Division by the issuance of said 147 bonds to said company's codefendant the said 310 bonds issued to complainants would be valueless or nearly so and the security therefor utterly worthless or practically so, and that, instead of said complainants' security being rendered less valuable by the issuance of said 147 bonds, the only value said security has is by reason of the negotiation, sale, issuance, and delivery of said 147 bonds to said company's codef'ts; and these codefendants of said railroad company elect to declare the principal of said bonds issued to them as aforesaid due and payable, with the interest thereon, and they pray that the injunction issued in said cause be dissolved.

And def'ts pray that a decree he entered herein adjudging and decreeing that these codef'ts of said company are the legal owners of said bonds issued to them; that each and all of said bonds
94 issued and delivered as aforesaid by said railroad company be declared valid and legal bonds of said company, and that the holders thereof *by* by this honorable court adjudged and decreed to participate in the fund realized from the sale under foreclosure decree and sale.

And def'ts pray for all such other and further relief as may to the court seem meet and equitable.

W. E. F. DEAL,
Solicitor for Def'ts.

EXHIBIT B.

Debts of Thomas Moore, late Contractor, Assumed by Nevada and Oregon R. R. Co.

Manning & Berry	$11,963 70
Manning & Berry	832 73
C. A. Bragg & Co	1,975 55
H. J. McMurray	22,961 66
H. J. McMurray	3,456 42
H. J. McMurray	5,506 75
W. Webster	1,500 00
W. E. F. Deal	1,000 00
A. J. Clark	3,682 46
D. Evans	1,440 00
Heymers & Comstock	469 00

95 UNITED STATES OF AMERICA, } ss:
District of Nevada, }

W. E. F. Deal, being first duly sworn, deposes and says that he is the solicitor for the def'ts named in the above-entitled action and makes this affidavit because he is specially authorized to make the same by some of said def'ts and because the others of said def'ts are absent from the State of Nevada, where deponent resides; that he has heard the foregoing answer read and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

W. E. F. DEAL.

Subscribed and sworn to before me this 19th day of May, 1883.
T. J. EDWARDS,
Clerk & Com'r of said Court.

Endorsed: In the circuit court, 9th circuit, district of Nevada. Charles Moran *et als. vs.* H. J. McMurray *et als.* Answer. Filed May 19, 1883. T. J. Edwards, clerk. W. E. F. Deal, att'y for def'ts.

96 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Complainants,

vs.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtors, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill & Lumber Co.; First National Bank, Oliver Lonkey, E. R. Smith, W. E. F. Deal, William Webster, David Evans, A. Frazer, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock; Charles T. Bender, Trustee; A. H. Manning, W. F. Berry, and James F. Lewis, George H. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, & William Wright, and The Nevada & Oregon Railroad Company, Defendants.

The replication of the above-named complainants to the answer of the above-named defendants to complainants' amended bill of complaint.

97 These repliants, saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said plea, for replication thereunto say that they will aver, maintain, and prove their bill and amended bill of complaint to be true, certain, sufficient in the law to be answered unto, and that the said answer of the above-named defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; that any other matter or thing whatsoever in the said plea contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill and amended bill of complaint they have already prayed.

ROB'T M. CLARKE,
Solicitor for Complainants.

98 UNITED STATES OF AMERICA, *State of Nevada:*

Rob't M. Clarke, being first duly sworn, on his oath deposes and says that he has read the above and foregoing replication and knows the contents thereof, and the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true; that he is the solicitor for complainants and makes this verification because the complainants reside out of the State of Nevada.

ROB'T M. CLARKE.

Subscribed & sworn to before me this 4th day of June, 1883.
T. J. EDWARDS,
Com'r U. S. Cir. Court, Dist. Nevada.

Endorsed: In the U. S. circ. court, ninth circuit and district of Nevada. Moran Bros. *vs.* H. J. McMurray *et al.* Replication. Filed June 4, 1883. T. J. Edwards, clerk.

99 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

MORAN BROS., Complainants,
v.
H. J. MCMURRAY *et al.*, Defendants.

It is hereby stipulated that the complainants above named may have 15 days' additional time in which to prepare and file brief in the above cause, & that def'ts may have 30 days to reply.
W. E. F. DEAL,
Att'y for Def'ts.
ROB'T M. CLARKE,
Att'y for Pl'ff-.

Endorsed: In the circuit court of the United States, ninth circuit and district of Nevada. Moran Bros. *vs.* H. J. McMurray *et al.* Stipulation for time to file briefs. Filed Nov. 21, 1883. T. J. Edwards, clerk.

100 In the Circuit Court of the United States, 9th Circuit, District of Nevada.

MORAN BROS., Complainants,
v.
MCMURRAY *et al.*, Defendants.

It is hereby agreed that def'ts may have until and including Feb. 17, 1884, to serve & file their brief, & that complainants may have until the 10th day of March, 1884, to file their brief in reply.
Dated Feb'y 7, 1884.
R. M. CLARKE,
Att'y for Complainants.
W. E. F. DEAL,
Att'y for Def'ts.

Endorsed: U. S. cir. court, dist. Nevada. Moran Brothers *vs.* McMurray *et al.* Stipulation. Filed Feb'y 8, 1884. T. J. Edwards, clerk.

101 *Findings, Decision, and Decree.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners, Complainants,

vs.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtois, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Co.; First National Bank, Oliver Lonkey and E. R. Smith, Copartners; W. E. F. Deal, William Webster, David Evans, A. Frazer, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nev.; Charles T. Bender, Trustee; A. H. Manning and W. F. Berry, Late Copartners in Trade at Reno, Nev.; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, and William Wright, and The Nevada and Oregon Railroad Company, Defendants.

102 This suit came on for trial at the March term, A. D. 1884, of the court upon the bill of complaint, the answer and reply, and upon the evidence and argument of counsel, and having been fully submitted and taken under advisement by the court, and the court being fully advised both of the law and fact, now renders its decision and makes its findings of fact and final decree as follows:

First. That complainants and each of them were and are citizens of the State of New York and residents thereof, and that the defendants were and are part citizens of the State of Nevada, resident therein, and part citizens of the State of California and resident therein.

Second. That The Nevada and Oregon Railroad Company, defendant, is a corporation of the State of Nevada, and as such corporation did, on, to wit, April 25th, 1881, duly execute three thousand bonds of the denomination of one thousand dollars each, and did thereby, by each of said bonds, acknowledge itself indebted and promise to pay to the holder thereof, at the city of New York, one thousand dollars on the first

103 day of June, A. D. 1930, and also to pay interest thereon at the rate of eight per cent. per annum, payable semi-anually on the first days of June and December in each year. Said bonds were transferrable by indorsement and delivery, and by the terms thereof became due and payable immediately upon failure of the said railroad company to pay the interest when due. Said bonds were to be secured by a mortgage made by the said railroad company to the Union Trust Company of New York, a corporation of the State of New York, which mortgage was dated April 25, 1881, and which mortgage was on the estate, real and personal, and franchise then owned or thereafter to be acquired by the said railroad

company in the States of Nevada and California; and it was stipulated in each of said bonds that the same should be of no force or effect until certified by the said Union Trust Company of New York to be one of the bonds secured by the said mortgage.

Third. That on the 25th day of April, A. D. 1881, the said
104 Nevada and Oregon Railroad Company, to secure said bonds and the interest thereon, duly executed and delivered to the Union Trust Company of New York its certain mortgage, and thereby mortgaged to the said Union Trust Company of New York all the estate and property, real and personal, of the said Nevada and Oregon Railroad Company then existing or thereafter to be acquired, and especially all the railroad line of the said Nevada and Oregon Railroad Company in the States of Nevada and California, and all the estate, real and personal, rights of way, roadway, and track, together with all the superstructures, depots, depot grounds, station-houses, water-tanks, workshops, machine shops, machinery, side tracks, turn-outs, turn-tables, tenders, cars, rolling stock of all kinds, fuel, equipments, fixtures, tools, and all other property used in operating said road, including all such property thereafter acquired, constructed, or owned, with all the tenements, hereditaments, and appurtenances thereunto belonging. Said mortgage was in trust for the benefit and security of the holders of said bonds, and it
105 was provided therein that if the said bonds and the interest thereon should not be paid when due, as therein specified, and for six months thereafter, then the said Union Trust Company of New York or its successors or assigns might foreclose said mortgage and sell the said mortgaged property or cause the same to be sold according to law and apply the proceeds to the payment of the said bonds and interest and costs of foreclosure and sale.

Fourth. That six hundred of said three thousand bonds, and no more, were certified by said Union Trust Company.

Fifth. That of the six hundred bonds so issued, certified, and secured three hundred and ten bonds were negotiated and sold to complainants, Charles Moran, Daniel Comyn Moran, and Amide D. Moran (Moran Bros.), of New York, for a valuable consideration paid at the time, and said Charles Moran, Daniel Comyn Moran, and Amide D. Moran (Moran Bros.) are now the owners and holders of said three hundred and ten bonds and each of them.

Sixth. The court further finds that before and at the time
106 said three hundred and ten bonds were negotiated, sold, and delivered the said Nevada and Oregon Railroad Company, in consideration of the purchase of said bonds, agreed and obligated itself in writing that it would not issue, negotiate, or sell any more of said bonds than ten of said bonds, or $10,000.00 worth, for each mile of completed road, and no more than three hundred and ten of said bonds for or upon the Reno Division of said road, to wit, the 31 miles of said road, beginning at the town of Reno, in the State of Nevada, and terminating at Beckwith's pass. Said written agreement was recorded in the office of the county recorder of the county of Washoe, State of Nevada, and said defendants and each of them had notice of said agreements and of the terms and conditions

thereof and of the stipulation limiting the negotiation and sale of bonds to ten thousand dollars for each completed mile of road.

Seventh. That after the said agreements limiting the issue of bonds were made, and while said agreements were in full force,
virtue, and effect, and after complainants had purchased the
107 said three hundred and ten bonds and paid therefor, the said railroad company, by and through its then officers and trustees—to wit, said defendant, D. W. Balch, trustee and president; said Geo. A. King, trustee and secretary; said C. A. Bragg, trustee; said A. H. Manning, trustee, and said W. F. Berry, as trustee, and said H. J. McMurray, stockholder, and said W. E. F. Deal and William Webster, as attorneys—issued and advised, caused and procured to be issued, the bonds mentioned in the answer of the defendants, they and each of them well knowing at the time the terms and conditions of the aforesaid contracts limiting the issue of bonds, and well knowing at the time that complainants had purchased for value the three hundred and ten bonds mentioned in the bill of complaint.

Eighth. The said one hundred and forty-seven bonds, and each of them, were procured from the said Union Trust Company of New York by said defendant, D. W. Balch, under and in pursuance of a resolution of the board of trustees of said Nevada and Oregon Railroad Company, adopted by said D. W. Balch,
108 C. A. Bragg, A. H. Manning, W. H. Berry, and Geo. A. King, acting as such board of trustees, and for the purpose, expressed in said resolution, and represented to said Union Trust Company of New York, of negotiating them for value, and after said bonds were so procured the said board of trustees delivered them to the original holders thereof without payment therefor of any sum of money whatever, and without any other or different consideration than as stated in these findings and decree.

Ninth. Except the ten bonds mentioned in the answer issued to William Webster and W. E. F. Deal, the remaining one hundred and thirty-seven of said one hundred and forty-seven bonds were delivered for and in consideration of pre-existing debts, and principally for debts owing by one Thomas Moore and not debts owing by the company, and in large part for claims which the said D. W. Balch, H. J. McMurray, A. H. Manning, W. T. Berry, and C. A. Bragg had assumed and agreed to pay; and the said ten bonds issued to said William Webster and W. E. F. Deal were de-
109 livered in consideration of professional legal services to be rendered by the said Webster and Deal as solicitors for the defendants in this suit, and said ten bonds were not delivered until after the suit herein was commenced.

Tenth. The said defendants, who in the answer are alleged to have and hold bonds, a portion of said one hundred and forty-seven bonds, and each of them received said bonds and hold the same as security for debts which existed at and before the time such bonds were acquired by them, and such persons, nor either of them, are *bona fide* purchasers of said bonds for value.

Wherefore, as conclusion of law, the court finds that the complainants are the owners and holders of three hundred and ten of

the bonds of said railroad company; that the same are secured by the said mortgage on the railroad franchise and property in the said mortgage described; that the complainants are entitled to have their said bonds and each of them, principal and interest,
110 paid out of the proceeds arising from the sale of the mortgaged premises, and that the said defendants nor either of them are entitled to participate in or share the proceeds arising from the sale of the said premises until after the payment and satisfaction in full of the said three hundred and ten bonds, principal and interest, belonging to complainants, nor unless there be a surplus remaining after payment in full of the sum due complainants; and if there be such surplus, then the said defendants are entitled to participate in such surplus, each in proportion to the amount of the bonds held by him, and it is ordered that decree be entered herein in accordance with these findings of fact and conclusions of law thereon.

May 6th, 1884.

GEO. M. SABIN, *Judge.*

Endorsed: In the circuit court of the United States, ninth circuit and district of Nevada. Charles Moran, Daniel Comyn Moran, Amide D. Moran, copartners, compl'ts, *vs.* H. J. McMurray *et al.*, def'ts. Findings and decision. Filed July 22, 1884. T. J. Edwards, clerk.

111 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners, Complainants,

vs.

H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtois, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Co.; First National Bank; Oliver Lonkey and E. R. Smith, Copartners; W. E. F. Deal, William Webster, David Evans, A. Frazer, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nev.; Charles T. Bender, Trustee; A. H. Manning and W. T. Berry, Late Copartners in Trade at Reno, Nev.; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, and William Wright, and The Nevada and Oregon Railroad Company, Defendants.

The court having made its findings and decision herein, it
112 is now considered, ordered, adjudged, and decreed, in pursuance of and in conformity with such findings and decision, that the complainants, Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners doing business in the name and style of Moran Bros., do have and recover from the defendants their costs in and about this suit expended and taxed at $—.

It is further ordered, adjudged, and decreed that complainants are entitled to have and do have their said bonds, to wit, 310 bonds of the denomination of one thousand dollars each, and the interest thereon at the rate specified in said bonds and mortgage, to wit, eight per cent. per annum, payable semi-annually, paid out of the proceeds arising from the sale of the said mortgaged premises in full, if the proceeds so arising are sufficient. It is further ordered, adjudged, and decreed that three hundred and ten of the six hundred bonds mentioned in the bill of complaint were negotiated and sold to *bona fide* purchasers for value, and are valid and subsisting obligations and are unpaid and a valid and subsisting charge
113 and lien upon the said railroad and property, and are entitled to be paid out of the proceeds arising from the sale of said mortgaged property. The balance of said six hundred bonds, to wit, two hundred and ninty bonds, mentioned in the bill of complaint; and each of them, including the one hundred and forty-seven bonds mentioned in the answer herein, were not issued, negotiated, or sold to *bona fide* purchasers for value, but were issued without any valuable consideration paid at the time, and were issued contrary to and in violation of the agreements of the said railroad company made prior to the issuance of any of the bonds in question, which agreements were to the effect that no more than ten thousand dollars of said bonds should be issued for each completed mile of said road, and were in excess of the bonds authorized by said agreement, and said 290 bonds are not nor are any of them entitled to participate in or share the proceeds arising from the said — of said mortgaged premises, except as to the surplus remaining after the
114 payment and satisfaction in full of said three hundred and ten bonds mentioned in the bill of complaint, together with the interest thereon and the costs and disbursements made and incurred in and about this suit. It is further ordered, adjudged, and decreed that the defendants are not nor are either of them entitled to have their said bonds or any part thereof paid out of the proceeds arising from such sale until the said bonds of complainants have been paid in full, both principal and interest, nor unless there be a surplus remaining after complainants' bonds, principal and interest, and the cost of foreclosing said mortgage and selling said mortgaged property have been fully paid.

May 13, 1884.

GEO. M. SABIN, *Judge.*

Endorsed: In the circuit court of the United States, ninth circuit and district of Nevada. Charles Moran, Daniel Comyn Moran, Amide D. Moran, copartners, compl'ts, *vs.* H. J. McMurray *et al.*, def'ts. Decree. Filed July 22, 1884. T. J. Edwards, clerk.

115 *Appearance of Defendants as Entered in Rule and Order Book in Moran Brothers v. McMurray et als.*

On filing precept in this cause, and on motion of W. E. F. Deal, Esq., it is ordered that his appearance as solicitor for the defendants

herein be, and the same hereby is, entered, and that this cause be now docketed for said defendants.

May 7, 1883.

T. J. EDWARDS, *Clerk.*

Minutes of Court Showing Proceedings Had and Taken in the Case of Moran Bros., Complainants, vs. H. J. McMurray et als.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

MAY 7, 1883.

This being the time heretofore appointed for the defendants
116 to show cause why an injunction should not issue as prayed in the bill, and the defendants having filed their verified answer, it is ordered, on motion of complainants' solicitor, that complainants have until and including the 12th instant to amend their bill by bringing in other parties as defendants, and that defendants have until and including the 16th instant to file their answer thereto. It is further ordered that the hearing of the motion for injunction be, and is hereby, continued until the 19th instant.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

MAY 16TH, 1883.

On motion of Mr. Deal it is ordered that defendants have until and including the 18th inst. to file their amended answer herein.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

MAY 19, 1883.

117 On motion of Mr. Deal, solicitor for defendants, it is ordered that defendants have until Wednesday, the 23d instant, to serve their amended answer herein.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

MAY 21ST, 1883.

On motion of Mr. Clarke, solicitor for complainants, it is ordered that the hearing of the motion for injunction be continued until next rule day or until brought on regularly by notice.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

JUNE 4TH, 1883.

On motion and by consent of solicitors for the respective parties it is ordered that N. Soderberg, Esq., be, and he is hereby, appointed a special examiner to take and report the testimony; that complainants have forty-five days in which to take their testi-
118 mony and the defendants the same length of time to take their testimony herein.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

JULY 2D, 1883.

On motion of Mr. Clarke, solicitor for complainants, it is ordered that Geo. W. Carr, Esq., be, and he is hereby, appointed a special examiner herein to take and report complainants' testimony in the State of New York.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

AUGUST 7, 1883.

On motion and by consent of the solicitors herein it is ordered that complainants have the month of September, 1883, to take their testimony herein; that defendants have the month of October to take their testimony, and that the time mentioned in the 69th equity rule be enlarged to include the said months of September and October.

119 CHARLES MORAN *et als. v.* H. J. MCMURRAY *et als.*

NOV'R 5TH, 1883.

On motion of Mr. Deal, solicitor for the defendants, it is ordered that the testimony in this cause be now published. On motion and by consent of the solicitors, it is ordered that the hearing of the motion for injunction be passed, subject to call.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

NOV'R 6TH, 1883.

On motion and by consent of solicitors for the parties it is ordered that the clerk of this court perfect the answer herein by affixing thereto the names of W. E. F. Deal, as solicitor, and Wm. Webster, as counsel.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

NOVEMBER 17TH, 1883.

120 Now, on this day came the parties, by their respective solicitors, and submitted the cause upon briefs to be filed. On motion and by consent of the solicitors, it is ordered that complainants have fifteen days to file their brief; that defendants have fifteen days to file their brief, and that complainants have ten days thereafter to reply.

Parties allowed to withdraw testimony.

CHARLES MORAN *et als. v.* H. J. MCMURRAY *et als.*

MARCH 17TH, 1884.

On motion of Mr. Clarke, solicitor for complainants, it is ordered that the hearing of the motion for injunction be passed until the further order of the court.

MORAN BROS. *v.* H. J. MCMURRAY *et als.*

MARCH 29, 1884.

This cause having been tried and submitted and duly considered by the court, it is now ordered that a decree be entered herein in accordance with the opinion now filed.

121 At a stated term of the circuit court of the United States for the district of Nevada, held at Carson City, in said district, on the 17th day of March, A. D. 1884.

Present: The Honorable G. M. Sabin, one of the judges of said court.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners Doing Business under the Firm Name of Moran Brothers,

v.

H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, —— ——, and —— ——, Copartners Doing Business in the Firm Name and Style of Washoe Mill and Lumber Company; First National Bank, a Corporation Created and Existing under and by Virtue of the Laws of the State of Nevada and of the United States of America, and Doing Business of Banking at the Town of Reno, in said State; Oliver Lonkey and E. R. Smith, Copartners Doing Business in the Firm Name and Style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazer, Clay-
122 ton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nevada; Charles T. Bender, Trustee; A. H. Manning and —— Berry, Late Copartners in Trade at the Town of Reno, Nevada, Citizens and Residents within the State of Nevada.

The complainants above named filed their bill of complaint, which is hereto annexed, on the 14th day of April, 1883, against the above-named defendants. A subpœna requiring the defendants to appear and answer in said cause on the first Monday in June, 1883, was thereupon issued, and was personally served previous to the return day upon each one of the defendants except defendant McMurray.

All of the defendants appeared in said cause by W. E. F. Deal, Esq., as their solicitor, and on the 7th day of May, 1883, filed their joint and several answer to said bill of complaint; which answer is hereto annexed.

On the 14th day of May, 1883, the complainants, by leave of court first had and obtained, filed an amendment to their said bill
123 of complaint, which amendment is hereto annexed; and on the 19th day of May, 1883, the defendants filed their answer to said bill of complaint—*i. e.*, the new defendants named in the amendment filed their answer.

A replication to said answer was filed on the 4th day of June, 1883; which replication is hereto annexed.

That on the 19th day of November, 1883, the testimony, proofs, and exhibits referred to herein as hereto annexed were all duly filed.

On the 13th day of May, 1884, the said cause having been previously brought to a hearing, a final decree was made and entered therein in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners, Complainants,

v.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN,
124 Wm. Henry, Charles Curtois, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Co.; First National Bank; Oliver Lonkey and E. R. Smith, Copartners; W. E. F. Deal, William Webster, David Evans, A. Frazer, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nev.; Charles T. Bender, Trustee; A. H. Manning and W. F. Berry, Late Copartners in Trade at Reno, Nev.; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, and William Wright, and The Nevada and Oregon Railroad Company, Defendants.

The court having made its findings and decision herein, it is now considered, ordered, adjudged, and decreed, in pursuance of and in conformity with such findings and decision, that the complainants, Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners doing business in the name and style of Moran Bros., do have and recover from the defendants their costs in and about
125 this suit expended and taxed at $—.

It is further ordered, adjudged, and decreed that complainants are entitled to have and do have their said bonds, to wit, 310 bonds of the denomination of one thousand dollars each and the interest thereon at the rate specified in said bonds and mortgage, to wit, eight per cent. per annum, payable semi-annually, paid out of the proceeds arising from the sale of the said mortgaged premises in full, if the proceeds so arising are sufficient.

It is further ordered, adjudged, and decreed that three hundred and ten of the six hundred bonds mentioned in the bill of complaint were negotiated and sold to *bona fide* purchasers for value and are valid and subsisting obligations and are unpaid and a valid and subsisting charge and lien upon the said railroad and property and are entitled to be paid out of the proceeds arising from the sale of said mortgaged property. The balance of said six hundred bonds, to wit, two hundred and ninety bonds, mentioned in the bill
126 of complaint, and each of them, including the one hundred and forty-seven bonds mentioned in the answer herein, were not issued, negotiated, or sold to *bona fide* purchasers for value, but

were issued without any valuable consideration paid at the time, and were issued contrary to and in violation of the agreements of the said railroad company, made prior to the issuance of any of the bonds in question, which agreements were to the effect that no more than ten thousand dollars of said bonds should be issued for each completed mile of said road and were in excess of the bonds authorized by said agreement, and said 290 bonds are not nor are any of them entitled to participate in or share the proceeds arising from the sale of said mortgaged premises except as to the surplus remaining after the payment and satisfaction in full of said three hundred and ten bonds mentioned in the bill of complaint, together with the interest thereon and the costs and disbursements made and incurred in and about this suit.

127 It is further ordered, adjudged, and decreed that the defendants are not nor are either of them entitled to have their said bonds or any part thereof paid out of the proceeds arising from such sale until the said bonds of complainants have been paid in full, both principal and interest, nor unless there be a surplus remaining after complainants' bonds, principal and interest, and the costs of foreclosing said mortgage and selling said mortgaged property have been fully paid.

May 13th, 1884.

GEO. M. SABIN, *Judge.*

Whereupon the said pleadings, proofs, orders, and final decree, together with the other papers in said cause, are duly annexed hereto, and this decree is duly signed, filed, and enrolled pursuant to the rules and practice of the court.

T. J. EDWARDS, *Clerk.*

128 Endorsed: U. S. circuit, dist. Nevada. Moran Bros. *vs.* McMurray *et als.* Equity. Enrollment of decree. Filed July 22d, 1884. T. J. Edwards, clerk.

129 U. S. Circuit Court, Ninth Circuit, District of Nevada.

UNION TRUST COMPANY OF NEW YORK, Complainant,
ag'st
THE NEVADA AND OREGON RAILROAD COMPANY, Defendant.

Same Court.

CHARLES MORAN & O'rs, Complainants,
ag'st
H. J. MCMURRAY & Others, Defendants.

I, the undersigned, examiner, duly appointed in each of the above-entitled suits, by orders of this court made therein, dated July 17, 1883, respectively, to take complainants' testimony in each of said

suits, in the State of New York, do hereby certify that notice by said respective complainants to take the testimony of Thomas Moore and others before me, as examiner, in the city of New York, on the 3d day of August, 1883, was furnished me, with a statement of
130 the due service thereof on defendants' solicitors in said suits; that a copy of the bill and answer in each of said suits was furnished me; that on said third day of August, 1883, and on the several adjourned days, as appears by the minutes annexed, Thomas Moore, Frank F. Fowler, and Charles Moran were produced by and examined orally as witnesses on behalf of said complainants to said suits, respectively, before me, as such examiner, at the office of Wheeler H. Peckham, attorney-at-law, Drexel building, New York city, N. Y., in the presence of the respective parties to the above-entitled suits, by their respective counsel, to wit, Wheeler H. Peckham, counsel for said complainants, and Horatio C. King, counsel for said defendants; that said witnesses were subjected to cross-examination by said counsel for defendants; that the testimony of said witnesses by question and answer was taken down by a stenographer, and, after having been written out by him, was read over and signed by them, respectively; that the presence of the parties or
131 counsel at the time of such signing and reading by said witnesses of said testimony, as required by rule 67, was orally waived by said complainants' and defendants' counsel above named in my presence, at a meeting called (subsequently to the taking and transcribing of said testimony) for the purpose of having said testimony read to and signed by said witnesses, in accordance with the rule, and that the said depositions so taken before me, including therein all objections and motions made by either counsel to questions put to or answers made by said witnesses, respectively, and including also the minutes of said examination, are hereto annexed; and I further certify that I have made complete and true copies of all the papers and documents offered in evidence on the taking of the testimony of said witnesses by either party; that I have marked the said copies, in the order in which the said papers and documents were offered, as Exhibits A, B, C, D, E, F, G, & H, I, & J, respectively, together with my initials, and have annexed the said copies hereto, and that said exhibits are, respectively, complete and true
132 copies of the papers offered in evidence and of which they purport to be copies.

Dated New York, October 30th, 1883.

GEO. W. CARR, *Examiner.*

Circuit Court of the United States, Ninth Circuit, District of Nevada.

UNION TRUST COMPANY OF NEW YORK
against
THE NEVADA AND OREGON RAILROAD COMPANY.

Same Court.

CHARLES MORAN and Others
against
H. J. MCMURRAY and Others.

Minutes of proceedings before George W. Carr, examiner, under separate notices in above-entitled suits.

NEW YORK, *August 3d, A. D.* 1883.

Present: Wheeler H. Peckham, of counsel for trust com-
133 pany and Charles Moran and others, complainants.
No appearance for defendant-.
Frank F. Fowler, one of the witnesses named in the notice, sworn on behalf of complainant-.
Adjourned to August 6th, at 11 o'clock.

NEW YORK, *August 6th*, 1883—11 o'clock.

Present: Wheeler H. Peckham, counsel for complainants; Horatio C. King, counsel for defendant-.
Adjourned, by consent, to 14th inst., at 11 o'clock.

NEW YORK, *August* 14, 1883—11 o'clock.

Same appearances.
Adjourned, by consent, to 21st, at 11 o'clock.

NEW YORK, *August 21st*—11 o'clock.

Same appearances.
Mr. King asks that a stipulation be entered upon the minutes to take the testimony subject to all legal objections and exceptions as to the form of the questions asked, and that such objections may be made at the time of the trial in court. Mr. Peckham declined to make such stipulation.

134 THOMAS MOORE, a witness called on behalf of the plaintiffs, being duly sworn, testified as follows:

By Mr. PECKHAM:

Q. Mr. Moore, where do you reside?
A. Elizabeth, New Jersey.
Q. And have for some years?
A. Yes, sir.

Q. Were you a contractor with the Nevada and Oregon Railroad Company?
A. I was.
Q. For the building of the road?
A. For the building and equipment of the road.
Q. You know Messrs. Moran Brothers?
A. I do.
Q. Do you remember the date of your first contract with the railroad company—about the time it was made?
A. The date of the contract with the first company—"The Nevada and Oregon Railroad Company"—I believe was August 26th, 1880.
Q. You say the first company; what do you mean? Were there two companies?
A. Yes, sir.
Q. Did they have the same name?
A. All but the "The."
Q. Which had the word "The"—the first or second?
A. The first one.
135 Q. How did the second one come to succeed the first? Was there a foreclosure and reorganization, or what happened?
A. There was an entire reorganization.
Q. Your first contract was with the first company?
A. Yes, sir.
Q. Have you that contract with you?
A. I think there is a copy here, sir.
Q. Have you the original here?
A. No, sir.
Q. I hand you a paper and ask you whether that is the contract to which you refer (handing witness paper)?
A. That is one of the originals, sir.
Q. Look at the signatures and see if they are the signatures of the persons whose signatures they purport to be.
A. Yes, sir.
Q. Do you know the signatures on it?
A. Yes, sir.
Q. Whose are they?
A. Thomas Moore and A. J. Hatch, president.
Q. Was Mr. Hatch then president?
A. He was.
Q. That is his signature?
A. It is.
Q. That is the seal of the company, is it?
A. Yes, sir.
Q. Have you a copy of that contract here now present?
136 A. Here is one (producing paper). There may be some grammatical errors, or something of that sort in it. That was copied from another original. The substance is exactly the same.
Q. Do you know whether that contract was recorded in Nevada?
A. Yes, sir; there is the record on it.
Q. The certificate of the record is on the original contract?

A. Yes, sir.

Mr. Peckham offers contract in evidence, and the witness, being unwilling to have the contract go with the testimony, asks the examiner to make a copy of it and forward it with the testimony. Exhibit "A," G. W. C., Ex.

Q. Now I want to ask your attention to a contract of December 4th, 1880.

A. There were two, sir, of that date.

Q. I hand you two papers and ask you if those are the two original contracts of that date to which you refer?

A. These I know to be two of the originals.

Q. You know the signatures?

A. Yes, sir.

Q. They are genuine signatures of the persons whose signatures they purport to be?

A. Yes, sir.

Q. And that is the seal of the company?

137 A. Yes, sir.

Q. Is that the first or second company?

A. The first company.

Q. Have you copies of those contracts?

A. I have.

The witness makes the same statement as to these two contracts that he made as to the others, and Mr. Peckham asks the examiner to attach copies of them to the testimony. Exhibits "B" & "C," G. W. C., Ex.

Q. The original contracts which you there hold have the certificates of record on them, have they?

A. Yes, sir; they have the certificate of the county recorder of Washoe county, Nevada, in each case.

Q. I hand you another paper and ask you what that is?

A. Contract with the old company, dated February 1st, 1881, made by Thomas Moore and George L. Woods, vice-president.

Q. Was Mr. Wood vice-president at that time?

A. Yes, sir. The contract was ratified by the special resolution of the board afterwards. It is a peculiar contract in that respect.

Q. Is that the seal of the company?

A. Yes, sir.

138 Q. And is it your signature?

A. Yes, sir.

Q. Have you a copy of that?

A. I have. (Witness produces copy.) The original is recorded the same as the others in Washoe county.

Q. There is a certificate on it as being recorded?

A. Yes, sir; that calls for the second-mortgage bonds.

Mr. Peckham offers contract in evidence in the same manner as before, and asks the examiner to attach a copy to the testimony. Ex. "D," G. W. C., Ex.

Q. I hand you another paper, dated April 26th, 1881, and ask if you know the signature to it, and if they are the signatures they purport to be?

A. Yes, sir.

Q. Is that the seal of the company?

A. Yes, sir.

Q. That is the second company, is it not?

A. Yes, sir; ratifying all the former contracts of the first company up to that time with me.

Q. Have you a copy of that?

A. Yes, sir (producing paper).

Mr. Peckham offers contract in evidence and asks the examiner to attach copy to the testimony. Ex. "E," G. W. C., Ex.

139 Mr. King objects to the admission in evidence of all this series of agreements as irrelevant and immaterial.

Q. I hand you another paper, dated May 24th, 1881, and ask if the signatures to it are the genuine signatures they purport to be and if that is the seal of the company?

A. Yes, sir; it bears certificate of record the same as the others.

Q. Have you a copy?

A. I have.

Mr. Peckham asks the examiner to attach copy of the contract to the evidence. Ex. "F," G. W. C., Ex.

Objection by Mr. King.

Q. Did you, about the 25th day of March, 1882, make a contract with the Nevada and Oregon Railroad Company and with Daniel W. Balch, of San Francisco, individually and as attorney-in-fact for H. J. McMurray, A. H. Manning, W. F. Berry, and C. A. Bragg, and with Alvin Burt?

A. I did.

Q. Is that agreement in writing?

A. Yes, sir.

Q. Have you the writing here?

140 A. No, sir; I have not it with me. I have it within reach.

Q. Where is it?

A. It is in the city now.

Q. Can you get it and deliver it to the examiner so that he can take a copy of it and annex a copy to the deposition?

A. I can.

Q. You have a copy of it here?

A. Yes, sir; that is a copy (producing copy).

Q. You had also a certified copy of the resolution of the directors of the railroad company?

A. I did, sir.

Q. And you have that in the same place as the contract?

A. I have.

Q. And you present here a copy of the resolution?

A. I do.

Mr. Peckham offers the originals of these two papers in evidence when the witness hands them to the examiner and asks the examiner to attach the copies in the same manner as the foregoing papers. Ex. "G" & "H," G. W. C., Ex.

Mr. King objects to the admission of the agreement and resolution as irrelevant, incompetent, and immaterial.

Q. Mr. Moore, the three hundred and ten bonds that are
141 mentioned in these contracts, do you know to whom they were issued or sold?

A. They were sold by me to Charles Moran or Moran Brothers.

Q. You received them from the company under your contract?

A. I did. The company issued an order to the Union Trust Company to deliver to me or on my order, and on my order the trust company delivered to Moran Brothers.

Q. I hand you paper, bearing date the 23rd day of March, 1881, purporting to be a contract between Moran Brothers and yourself, and ask you if the signatures to it are genuine and if you know them?

A. Yes, sir; they are genuine and I know them.

Mr. Peckham offers the paper in evidence, and asks the examiner to attach copy to the testimony. Ex. "I," G. W. C., Ex.

Mr. King objects to the admission of paper.

Q. I hand you now two papers attached, one purporting to be a receipt and the other purporting to be a contract, the receipt bearing date 20th of November, 1882, and the paper purporting to be a contract, bearing date April 26th, 1882, signed Moran Brothers and Thomas Moore; and I will ask you whether the signatures
142 thereto are the genuine signatures they purport to be?

A. The paper of April 26th, agreement Moran Brothers and Thomas Moore, and Thomas Moore's receipt at the bottom are true. This receipt attached to the front part I never saw before, and I would not be sure about that signature.

Mr. King objects to the question as immaterial and irrelevant.

Mr. Peckham stipulates that objections shall have the same force, whether made before or after the answer.

Mr. Peckham offers contract in evidence, and asks the examiner to annex copy to the testimony. Ex. "J," G. W. C., Ex.

Q. Were any other of the bonds of the railroad company issued to you than the three hundred and ten mentioned in some of those contracts?

A. No, sir.

Q. Did you have any conversation with the president of the railroad or with other officers pending your contract, and while you were at work in the construction of the road, with reference to the number of bonds to be issued per completed mile?

A. Yes, sir.

143 Objection by Mr. King as irrelevant and incompetent.

Q. Please state when and with whom and what the conversation was?

A. I can only state generally the conversations with the different members of the board and could not give the dates.

Q. Give it as near as you can.

A. Simply the understanding was that we were to issue bonds on the completed road at ten thousand dollars a mile.

Mr. King objects to the answer as giving an understanding and not the conversation.

(Answer continuing:) The conversation on a number of occasions was to the effect that we were to limit the first-mortgage bonds to ten thousand dollars per mile of completed road.

Q. Can you specify any individual with whom any such conversation occurred?

A. I think I may safely say with every one of the board, but certainly with Mr. Balch and the prominent members of the board.

Mr. King objects to all this form of question.

Q. Can you give me the names of the members of the board with whom you had such conversations?

144 A. I am positive that it was discussed with Mr. Fowler, with Mr. Balch, and I would not be sure but I think with every member of the later boards.

Q. Won't you give us their names?

A. I cannot say positively about these gentlemen, but I remember this generally because of the concurrent circumstances.

Q. Do you remember the names of members of the later boards with whom it was discussed?

A. No; I cannot say positively it was discussed with other members of the board, but I believe it was.

Q. Cannot you give me the names of the other members of the board?

A. Mr. Manning, Mr. Bragg, McMurray, Balch, King, Fowler. I do not recollect. I think there were one or two other members of the board. Those are the principal names.

Q. Are those persons the same persons as the defendants bearing those names?

A. I do not know who the defendants are, sir. You mean in this suit?

Q. Yes.

A. I have not seen who the defendants are. I have heard two names mentioned—McMurray and Balch (names of defend-

145 ants are read to witness); McMurray, Balch, Fowler, A. H. Manning, R. L. Fulton; those are all the names of directors I see here.

Q. Under the last contract that you made with the railroad company and with Mr. Burt and others were you paid the $3,500?

Objection by Mr. King.

A. I was.

Q. By whom?
A. I think it was a check of Moran's.
Q. Did the railroad company pay any portion of your indebtedness then existing?
A. Out in the West—yes; I believe that they did; I have understood that they did.
Q. Have you any idea how much your total indebtedness was?
A. Yes, sir.
Q. State as near as you can.
A. As near as I can judge, my indebtedness, after exhausting the eighty thousand dollars, proceeds of the bonds, would not be far from forty-five thousand dollars, mainly to Balch and his friends, the principal creditors.

Hearing adjourned to 3 p. m. same day.

Examination of Mr. MOORE resumed by Mr. PECKHAM:

146 Q. In one of these contracts something was said about second-mortgage bonds. Please state what occasion there was for any provision about second-mortgage bonds.

Mr. King objects to the question as irrelevant and immaterial.

A. The contract of February 1st, 1881, covered the advances made by me, and among other things it was foreseen that the company would be apt to be indebted to me for some balance at the end of the thirty-one miles work. It was decided that it was proper to provide some method of paying me that balance. It was to be paid in either second-mortgage bonds at eighty or in the proceeds of the reserved stock to be sold from the treasury, because we all recognized the fact that it was not right, honorable, or proper to issue first-mortgage bonds, even to settle my balance due ahead of completed road, because I felt, and the company felt, that our agreement was as stated, that these bonds were to be issued on completed road, and therefore that provision was made, and because I had no right to such a settlement in first-mortgage bonds.

Mr. King objects to the answer and moves that all the ar-
147 gument contained in it be stricken out.

Cross-examined by Mr. KING:

Q. Mr. Moore, have you any interest in the result of this suit?
A. I do not know what you mean by an interest. Do you mean a moneyed interest?
Q. I mean a pecuniary interest.
A. No, sir; not to my knowledge or expectation.
Q. Have you any expectation of getting anything out of it?
A. Never, sir.
Q. Have you any expectation of receiving anything from Moran Brothers or from the defendants in this suit at the conclusion of the suit?
A. Dependant at all upon the suit, do you mean? No, sir; I do

not presume that the suit affects me a particle one way or the other, pecuniarily.

Q. Have you any feeling in the matter as between the plaintiffs and defendants in these two suits?

A. What do you mean by feeling? I do not quite get the meaning of the question.

Q. Any animus of any kind—love or hate?

A. I have very strong feelings, sir, but my sense of justice and truth are beyond any feeling I have in the case.

148 Q. They would not affect your testimony?

A. They would not, sir.

Q. Do you know, of your own knowledge, whether Moran Brothers have promised to pay any witnesses in these cases any pecuniary consideration for their testimony?

A. I do not know anything about Moran Brothers or what they have agreed or have not, or anything at all about them. I have had no communication with them or knowledge of any of their business or acts in a long, long while.

Q. Do you know whether they have given any of the witnesses or yourself any interest in any other railroad enterprise which they may have?

A. No; I know they have not given me, and I do not know that they have given anybody else. I have not any reason to suppose that they have or have not. If you want my opinion, they have not.

Q. Now, will you let me have that agreement of March 25th?

The witness produces the original agreement of March 25th, which he had agreed to produce.

Q. Were you present, Mr. Moore, when this agreement of
149 the 25th of March, 1882, between Thomas Moore and the Nevada and Oregon Railroad Company was executed?

A. To the best of my recollection, I was present when every signature was made.

Q. Where was it executed?

A. It was, I think, at Mr. Nettleton's office the signature was put on it.

Q. Mr. Nettleton's office was where?

A. No. 115 Broadway—the Boreal building; the same Nettleton whose name is at the bottom of the agreement.

Q. Where was the agreement drawn?

A. It was drawn piecemeal, during a series of several months, at different places, by different persons of the different parties to the agreement, but a great deal of it was done, as I recollect, at the office of Mr. Burt, one of my counsel.

Q. Where was the final paper drawn up, as it was made and is presented here?

A. That is a type-writer copy.

Q. Where was the original drawn up?

A. I think it was between Mr. Glen and Mr. Balch and Mr. Burt

and myself and Mr. Fowler. I cannot tell just where it was drawn up.

Q. In what office was the draft made?

150 A. The draft was made piecemeal, by all of us gentlemen, and I believe it was finally brought together in Mr. Burt's office (Alvin Burt), to the best of my recollection.

Q. This copy was made and then you went to Mr. Nettleton's office and executed it?

A. Yes, sir.

Q. Now, you say at the time this agreement was made it was in Burt's office, you think?

A. I think so.

Q. Now who was present when that agreement was made?

A. I could not tell you.

Q. Will you try to recollect?

A. Mr. Fowler, and Mr. Balch, and Mr. Glen, and Mr. Burt, and Mr. Godeffry, and myself were conversant with these facts and drew them up gradually, and as to who was present at the time of the final writing of that paper I could not any more say than the man in the moon. I cannot recollect.

Q. I want to know who was present when it was signed.

A. At the time it was signed D. W. Balch was present; F. F. Fowler was present; Charles T. Glen and I was present, and there were one or two others whom I do not recollect positively. That is my recollection, sir.

151 Q. Do you remember who was the secretary of the company at the time this agreement was made?

A. I don't know who was secretary of the company at the time the agreement was made. I may have heard, but I do not recollect.

Q. Was the secretary of the company present when the agreement was signed?

A. No; not as I understand. No, sir.

Q. Do you know who was the treasurer of the company at the time this agreement was signed?

A. My impression is that it was Mr. McMurray, but I cannot say positively now.

Q. Was he present when it was signed, or anybody to represent him?

A. Not as I know of, except Mr. Balch represented him individually.

Q. Do you know who had custody of the seal of the company at the time this agreement was signed?

A. I do not know, sir.

Q. Was the seal of the company in Nevada?

A. You mean the metal seal with which you make the impression?

Q. Yes.

A. I presume it was there. I do not know.

Q. You did not see it in New York?

A. I did not, to the best of my knowledge.

Q. Did you see this seal, which purports to be the seal of the company, attached in New York?

A. To the best of my knowledge, I did see it.

Q. In what form was it?

152 A. Why, in wafer form, as I recollect.

Q. Then there was not an actual seal of the company attached?

A. You mean an actual impression put upon the paper?

Q. Yes.

A. To the best of my knowledge, no.

Q. It does not appear to go through the paper, does it?

A. No.

Q. Then this seal must have been attached in New York?

A. Yes; it must have been attached in New York.

Q. Mr. Moore, you were present when that seal was attached?

A. The seal on that paper? I believe that I was, sir. There is no doubt in my mind about it.

Q. Who had the seal?

A. Well, I cannot tell whose hands I saw it come out of, but I think it was produced by Mr. Balch; but I could not tell you positively.

Q. You are not sure about that?

A. No, sir.

Q. You are not sure it was not Mr. Fowler?

A. It may have been Mr. Fowler, but I cannot tell you positively.

153 Q. Do you know anything about the passage of this resolution?

A. Nothing, except that the resolution was shown me after Mr. Balch arrived here, wishing to make some arrangements in relation to my contracts with the company.

Q. Do you know anything about its regularity?

A. I know nothing about the regularity of it.

Q. You testified that 310 bonds ($310,000) were issued to Moran Brothers. What did Moran Brothers pay for them?

A. I don't think I testified they were issued to Moran Brothers. I testified that I had an order from the company, under my contracts, to get them, and gave an order for them to Moran Brothers.

Q. You sold the 310 bonds to Moran Brothers for how much?

A. $248,000, I believe.

Q. Eighty cents on the dollar?

A. Yes, sir.

Q. And no more bonds were issued to you except the 310 bonds?

A. No, sir.

Q. There were other bonds issued, weren't there, by the company?

A. Never, to my knowledge, until very recently.

Q. Was there never any understanding or arrangement

154 between you and the company that they were to assume your indebtedness and issue other bonds?

A. Issue other bonds in connection with assuming my indebtedness?

Q. Yes.

A. No, sir; never to my recollection; not one.

Q. Am I to understand that when you left Nevada you were out of debt?

A. No, sir. I have stated that after exhausting the proceeds of the bonds my indebtedness was about $45,000. I want to change that slightly. I figured mentally this morning and made an error in subtraction. A part of the 80,000, about $4,000, was used here, and would make the indebtedness about $49,000.

Q. Do you mean to say that you had no knowledge of the issue of any other bonds besides these 310?

A. I do mean to say so; yes, sir.

Q. You don't know anything about the company issuing bonds to pay your indebtedness?

A. No, sir. The first that I heard of that was not with regard to my indebtedness, but with regard to their issuing bonds. I saw a newspaper article saying that Mr. Balch had sworn that there were $600,000 of bonds out, and that was a perfect surprise to me, and I did not know why they were issued. I did not know then
155 what had been done with them.

Q. You spoke about the receipt of $80,000?

A. The receipt of it?

Q. A subscription which you paid to Mr. Fowler for 400 shares of stock?

A. I did not speak about any subscription paid Mr. Fowler.

Q. You say the company paid your indebtedness after exhausting $80,000 of the proceeds of the bonds—the company paid $40,000 of your debts?

A. I did not say that; but this $80,000 from Mr. Moran would lay the track and pay part of my indebtedness and leave me in debt about $49,000.

Q. And your claim is that the only amount that was due for the company to assume and pay was $45,000?

A. I mean to say that after paying that $80,000 from Mr. Moran for laying the track and paying part of my indebtedness there was about $49,000 indebtedness. From any knowledge that I possess at present and from every ground I can imagine for having a debt, the debts that I owed and the cost it would be to me as contractor to finish the thirty-one miles of road would have made it incumbent on me to pay out, in order to liquidate those debts
156 and complete that work, about $144,000, providing I supplied $15,000 more of new rolling stock. Without supplying that rolling stock (and it was not supplied) to the best of my knowledge, it would have made my debts $129,000, my debts and the cost of building that 31 miles of road. Now, applying the $80,000 from Mr. Moran to paying a part of my debts and building that road, applying this against the total of $129,000 leaves between $45,000 and $50,000 yet outstanding of my debts, irrespective of any R. R. Co.'s debts, and the road completed and paid for, barring those debts.

THOMAS MOORE.

Acknowledged by Thomas Moore to be his signature.
N. Y., Oct. 17, '83.

GEO. W. CARR, *Examiner.*

FRANK F. FOWLER, called on behalf of plaintiffs, having been duly sworn, testifies as follows:

Examined by Mr. PECKHAM:

Q. Mr. Fowler, I show you the paper which has been produced by Mr. Moore, purporting to be a contract, of date March 25th, 1882, between Moore and the railroad company and Balch, for himself and others, and I call your attention to the seal, purporting
157 to be the seal of the company, that is on that paper, and I ask you if you know anything about that seal and who got it, and who attached it?

(Hands witness paper).

A. This is the seal of the company. The impression was taken by myself from the seal of the company and brought to New York.

Q. Who placed it upon the paper?

A. I furnished it for placing on the paper.

Q. By whose order or direction did you do that?

A. By the direction of Mr. Webster, the counsel for the company, in Reno, and Mr. Balch, president, here.

Q. Was Mr. Balch there?

A. Mr. Balch was there.

Q. Is that his signature?

A. That is his signature.

Q. You were at the time vice-president of the company?

A. I was.

Q. And a member of the board of directors?

A. Yes, sir.

Q. Handing you a copy of the paper also produced by Mr. Moore purporting to be a certified copy of some resolution of the board, I ask you if you know anything about that meeting of the board of directors?

A. I was present at the meeting of the board of directors.

Q. Was that resolution passed?

158 A. It was.

Q. Is that a true copy of it?

A. That is a copy of it in my own handwriting.

Cross-examined by Mr. KING:

Q. Mr. Fowler, what is your position towards this company, defendant?

A. I love right and hate wrong. So far as they are right, I am with them.

Q. In the success of which side are your interests involved?

A. I don't know, sir; my sympathies and feelings are with Mr. Charles Moran in this matter.

Q. Are you down on the railroad?

A. Against the directors of the company for what they have done.

FRANK F. FOWLER.

Signed in presence of—

GEO. W. CARR, *Examiner.*

N. Y., Oct. 20th, '83.

CHARLES MORAN, plaintiff in the second above-entitled action, called as a witness on his own behalf, having been duly sworn, testifies.

By Mr. PECKHAM:

159 Q. Mr. Moran, at the time you made the contract, in March, 1881, with Mr. Moore, to purchase bonds of this Nevada and Oregon Railroad Company, did you learn or understand from Mr. Moore anything with regard to the number of bonds that were to be issued per mile?

A. I did understand there were to be $10,000 a mile issued on finished road.

Q. Did you ever have any understanding or statement from Mr. Balch, the president of the company, in that respect?

A. I saw nothing of Mr. Balch, I think.

Q. Until after you had made your advances?

A. Yes, sir.

Q. I- making these advances and buying these bonds did you place any reliance upon the fact that there were to be but $10,000 a mile, as you understood?

A. Certainly, sir; if it had been $11,000 I would not have bought them at any price.

Q. You say Balch was not here till later. He was here before you took the last 100 bonds?

A. Yes, sir.

Q. Did you have any understanding with Mr. Balch as to the amount that was to be issued per mile?

A. He made no statement that amounted to anything, but
160 I saw a circular of the Nevada and Oregon Railroad Company in which the issue was limited to $10,000 per mile.

Mr. MOORE recalled.

By Mr. PECKHAM:

Q. Mr. Moore, this agreement of 25th March, 1882, was executed in triplicate, was it not?

A. Yes, sir.

Q. And one of the originals went out to Nevada and was recorded, was it not?

A. One went to Nevada and was recorded. That was the copy that Mr. Burt had.

THOMAS MOORE.

Acknowledged by Thomas Moore to be his signature Oct. 17, 1883.

GEO. W. CARR, *Examiner.*

Mr. MORAN cross-examined by Mr. KING:

Q. Did you ever see any resolution of the Nevada and Oregon Railroad Company, of an official nature, that restricted the issue of bonds to $10,000 per mile?

A. No; I don't know that I ever did.

Q. You never saw any?

A. No.

Q. And the information you had was from whom?

A. From everybody—that $10,000 per mile was the full amount of bonds that they were to issue.

161 Q. By "everybody" whom do you mean?

A. Mr. Moore at the beginning, but everybody that I met in connection with the road.

Q. Did you understand that the amount of the issue on the railroad should be $310,000?

A. On the thirty-one miles $310,000, and on the three hundred miles, as the prospectus was, it should be $3,000,000. Three hundred miles was the contemplated length of the road, and that there was to be $3,000,000, $10,000 per mile, and first-mortgage bonds only to be issued as the road was finished.

Q. Well, all you ever heard was what people told you?

A. Yes.

Q. And you never saw any document about it at all?

A. No, sir.

Q. Do you know anything at all about the agreement of March 25th, 1882?

A. I don't know what you mean, sir. (Paper handed witness.) I don't know whether I ever saw that agreement or not. It was a point on which there was never a dispute or discussion or a word said, except that that was the fact. From the beginning we never talked of anything else.

162 Q. Were you present at the time of the making of the agreement between Mr. Balch and Mr. Moore and the railroad company which has been testified to in your presence?

A. No, sir.

Q. You say you saw a circular or prospectus?

A. That was long afterwards.

Q. Had it any connection with this?

A. No; it was simply a prospectus of the road stating $10,000 per mile as the limit of the bonds. Mr. Balch sent me a copy; that is the way I got it.

Redirect:

Q. You have your 310 bonds now in your safe?

A. I have, sir.

CH'S MORAN.

Signed in presence of—
GEO. W. CARR, *Examiner.*

N. Y., Oct. 29, 1883.

163 EXHIBIT "A." G. W. C., Ex.

Articles of agreement, made and concluded this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and The Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth:

That whereas the said party of the second part has represented to the party of the first part that the sum of seven hundred thousand dollars cash can be obtained through stock subscriptions to be applied to the construction and equipment of the Nevada and Oregon railroad upon the portion of the same extending southerly from Beckworth Pass to Reno, Carson, and the vicinity of Bodie, including a branch to Virginia City, running from a point about sixteen miles southerly from Reno, and upon the Carson Division, and that the entire work of building and equipping said portion of railroad, including grading, bridging, track, buildings, turn-tables, switches, right of way, clearing and grubbing, structures and superstructures, ballasting, culverts, cattle-guards, trestles, and such
164 other material and work as may be necessary to a complete, continuous, and properly constructed and equipped railroad, can be thoroughly and substantially performed between October 1st, 1880, and March 1st, 1881, at a cash outlay not exceeding twenty hundred and thirty-five thousand dollars, including allowance to the railroad company of ten thousand dollars for engineering, stationery, and incidental expenses, and of thirty thousand dollars for expenses in securing right of way; that the business of the road will be highly remunerative as soon as thirty miles shall be put in operation, and that upon the completion of the entire distance aforesaid and for ten years thereafter the business income of the road will be fully three hundred and fifty thousand dollars per annum in excess of all expenses, interest, and taxes; and that fifty-year 8 per cent. first-mortgage bonds to the extent only of ten thousand dollars per mile and capital stock to the extent only of twenty thousand dollars per mile for the first one hundred and eighty-five miles will be issued, making a total of eighteen hundred and fifty
165 thousand dollars in first-mortgage bonds and thirty-seven hundred thousand dollars, par value, in stock upon the entire one hundred and eighty-five miles:

Now, therefore, in consideration of the above and of the covenants, agreements, and payments hereinafter mentioned to be made and kept and performed by the said party of the second part, and in further consideration of the sum of one dollar to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged by the party of the first part, and for and in consideration of the covenants and agreements herein to be kept and performed, and in consideration of the sum of one dollar to the party of the second part in hand paid by the party of the first part, the receipt whereof is hereby acknowledged by the

party of the second part, it has been agreed and by these presents it is covenanted and agreed by and between the parties hereto—

1st. That the party of the first part will construct and finish on or before the first day of March, 1881, in substantial and
166 workmanlike manner, the proposed railroad, and as follows: As soon as the sum of two hundred and fifty thousand dollars in valid stock subscription shall be obtained to commence work upon the Carson Division, extending thirty miles, more or less, from Reno to Carson, and including the Virginia Branch, extending twenty miles, more or less, from near Washoe Lake to Virginia City. As soon as an additional one hundred thousand dollars in valid stock subscriptions shall be obtained to commence work upon the Reno Division as far as Beckworth Pass, from Reno thirty miles, more or less. As soon as an additional three hundred and fifty thousand dollars in valid stock subscriptions shall be obtained to commence work upon the Bodie Division, extending one hundred and five miles, more or less, from Carson to the vicinity of Bodie. And for the purposes of this contract it is conceded that the total distance as aforesaid aggregates one hundred and eighty-five miles, and that, in addition thereto, necessary sidings shall be con-
167 structed at proper points and connected with the main tracks by proper switches, the total aggregate length of said sidings not to amount to more than five miles.

2nd. The work under this contract does and is intended to include all the graduation, masonry, bridging, iron, rails, ties, track-laying, ballasting, turn-tables, structures and superstructures, and necessary buildings, locomotives, and cars, and such material and work as may be needful to complete a continuous and properly constructed and equipped railroad between the points aforesaid, excluding fencing.

3rd. The road-bed is to be graded for a single track of three-foot gauge.

4th. Graduation includes all excavations and embankments required for the foundation of the road-bed and for street or road approaches and crossings and all excavations for foundations of culverts, piers, abutments, walls and bridges, and for drains, sidings, foundations of station-houses, engine-houses, turn-tables, or other necessary structures, and all track slopes and ditches shall be completed in a thorough, neat, and workmanlike manner, and all gradu-
168 ations shall be of ample dimensions.

5th. At all crossings of public roads commodious graded approaches shall be constructed for the benefit of the public, and all farm roads shall be properly graded at points of crossing, to enable the residents to cross the railroad track with ease and safety.

6th. Culverts and drain pipes, if any are necessary, shall be of proper material and dimensions and carefully and substantially built or laid.

7th. All bridges and trestles shall be built under skilled supervision and of sound materials, timbers, and bolts and be of sufficient strength to safely support, at the ordinary speed, freight and passenger

engines and trains of the same weight as those now in service and use on similar railroads.

8th. The track shall be properly laid and graded, and the ties thoroughly tamped.

9th. The ties shall be of suitable wood and not less than five by six inches and sixty-four inches in length and shall be placed at regular intervals, as nearly as may be, and not less than twenty-six hundred and forty per mile, and upon Virginia Branch shall
169 be of red fir, six by seven by sixty-four inches.

10th. Rails shall be of good merchantable iron of the T pattern and weight not less than thirty-five pounds per yard, except where on straight or tangent line the grade may be less than sixty-one feet per mile, when thirty-pound rails may be used; and whenever the thirty-pound rail is used there must be not less than twenty-nine hundred and ninety-two ties per mile; the rails to be laid so as to prevent expansion from affecting the alignment and to be properly spiked and spliced, with fish-plates at the joints, and upon all curves a proper elevation shall be given to the outer rail.

11th. The tracks shall be ballasted with such material as can be found contiguous to the line, and ballast is in no instance to be hauled except by train, and not to exceed a distance of three miles.

12th. The space for the road-bed shall be cleared of all trees, saplings, and sage brush, and wherever embankment is less than two feet in height all necessary grubbing shall be done in advance.

13th All switches and frogs needed, not exceeding twenty-
170 five in number of each, are to be supplied and properly placed.

14th. Suitable buildings, not exceeding fifteen in number, are to be erected for depots and engine-houses, the latter to be of sufficient size each to contain three convenient stalls for engines.

15th. Bridges are to be three, four, or five in number, but not more than five, and if in any instance a bridge shall exceed one hundred feet in length from bank to bank the railroad company shall pay to the party of the first part fifty dollars for each foot so in excess; and wherever trestle-work may be demanded the railroad company shall pay to the party of the first part twenty-five dollars per thousand feet, B. M., for the completed structure, according to the quantity of lumber employed, this payment to cover bolts and iron-work and workmanship.

16th. The party of the first part is to contribute towards the payment of engineering, stationery, and incidental expenses during the progress of construction of the railroad a sum of money not to exceed ten thousand dollars, in such sums as the same may be needed for the actual wants of the company, and no greater
171 amount than two thousand dollars in any one month; also towards the payment of expenses incurred in procuring right of way a sum of money not to exceed thirty thousand dollars, as the same may be needed, but no greater amount than six thousand dollars per month; and in the event that so much as ten thousand dollars *and* or thirty thousand dollars shall not be required for the purpose or purposes specified then, at the completion of the work of construction as aforesaid, there shall be an equal division of such sur-

plus, half to the party of the first part and half to the party of the second part; and in the event of more than ten thousand *and* or thirty thousand dollars being required for the purpose or purposes specified, then the railroad company shall, out of its one hundred thousand dollars' reserve stock, provide for and pay the same.

17th. The locomotives and cars shall be of good make and new, and of such patterns as are now approved upon successful railroads of similar gauge, grades, and general requirements; and the
172 railroad, as above provided for, is to be fully completed and equipped on or before the first day of March, 1881, always provided that the party of the second part shall punctually keep and perform the covenants and agreements herein contained on its part, and shall do all things necessary to provide all right of way and free access for the party of the first part to all necessary localities promptly and in due season. It is, however, understood that if the track shall be actually laid so that it will be absolutely safe for passenger trains at a speed of twenty-five miles an hour and freight trains at a speed of twenty miles an hour to run over said road, and for business operations to be safely carried on throughout its entire length, from Reno to Bodie, including the branch to Virginia, and from Reno to Beckwith Pass by March 1st, 1881, then the ballasting, adjustment of slopes, and other work not essential to safety may thereafter be completed, provided the same shall be pushed forward with vigor and without intermission.

18th. The entire work shall be done under the supervision
173 of the president or other duly appointed agent of said company, and the certificate of S. H. H. Clark, general superintendent of the Union Pacific railroad, or, in case of his inability from any cause to act, the certificate of Jonathan Dwight, of New York city, as to the shipment, supply, or delivery of material, the quality of the work and material, its sufficiency under this contract, and for the purposes designed, together with his final acceptance and certificate of the acceptance of the road, shall be binding upon both parties hereto, it being agreed that his determination as to all questions arising under this contract, including the question whether any installment hereinafter provided to *to* paid is due, shall be conclusive, it being, moreover, agreed that his certificate may issue upon personal inspection and knowledge or upon joint letter or other notice from the president of the Co. and Thomas Moore as to any performance under this contract; and if at any time said president and Thomas Moore should fail to agree as to joint letter or notice either of them ma*ll* call upon said S. H. H. Clark or, in
174 his absence or inability, upon said Jonathan Dwight to make the necessary personal inspection as to the facts and decide all matters in controversy.

19th. All earth excavation in excess of six thousand cubic yards per mile, average, on any division or branch shall be paid for extra at the rate of twenty cents per cubic yard, and in the event of there being any rock material encountered in excavation the same shall be paid for extra at the rate of one dollar per cubic yard, and any hard pan, indurated earth, or cemented material, not rock, at the

rate of forty cents per cubic yard, and any excess over twenty cents per tie in the cost of ties delivered at Reno or elsewhere on line of the railroad shall be paid extra to the party of the first part by the party of the second part, and all tunnel excavation at the rate of three dollars and fifty cents per cubic yard, including the necessary timbering and zinc lining, and no charges other than those provided for herein are to be allowed to the party of the first part for work done on or about the subject matter or matters of this certificate.

175 20th. If at any time after commencing work the party of the first part shall have failed to perform up to that time a reasonable proportionate amount of the work of construction or of the shipment of material, then and in that case the party of the second part may take such necessary measures as shall insure the completion of the road in the manner and by the time herein mentioned, and in such an event it is authorized to pay for work or material so ordered and used or performed out of the stock, bonds, or funds agreed to be paid said party of the first part for the completion of said road and to offset such payments against the amount due under this contract, rendering only the surplus, if any, to the said party of the first part; and upon the presenting to the custodian of the bonds and stock herein mentioned of satisfactory evidence of the expenditure of moneys thus by said party of the second part, such custodian shall pay to said party of the second part the amount expended in said stock and bonds.

176 21st. It is distinctly agreed and understood that the decision of S. H. H. Clark, or in his absence, of Jonathan Dwight aforesaid in any dispute which may arise between said company and the contractor shall, as to matters provided herein or relative to the same, be final and conclusive as to both parties.

22d. The party of the first part agrees to inspect profiles, maps, and locations, and confer with parties desiring to subscribe to the stock and with those desirous of making contracts for transportation of wood, lumber, and other freight, and the party of the second part covenants and agrees to assist the party of the first part in satisfying himself as to the correctness of the representations hereinbefore contained; and in the event that the party of the first part does not obtain satisfactory evidence of the fulfillment of said representations he shall be at liberty to cancel this contract by notice in writing addressed to the office of the party of the second part at Carson, Nevada, as soon as he can determine the matter, and not later than ten days after receiving the working profiles and maps of any division for inspection; and in such

177 event the said party of the second part shall pay to him the sum of five hundred dollars for loss of time, services, traveling and other expenses and damages; and if said party of the first part shall not, by notice as aforesaid, cancel this contract, then such failure to notify shall be deemed conclusive evidence that he has satisfied himself, and that this contract is to remain in full force and effect, without claim for damages by or against either party hereto or any party named herein on account of said representations, which

for all purposes are to be deemed as satisfactorily established; it being understood that the issue of first-mortgage bonds is to remain at the limit of eighteen hundred and fifty thousand dollars, and the capital stock at thirty-seven hundred thousand dollars, par value, as aforesaid.

23rd. The equipment of the Carson Division is to consist of four locomotives, one passenger car, twenty box cars, one combination car, seventy flat cars, five ore cars, two hand or track cars, and necessary tools for track repairs; of the Virginia Branch, one
178 locomotive, one passenger car, one combination car, ten box cars, ten flat cars, two ore cars, one hand or track car, and necessary tools for track repairs; of the Bodie Division, five locomotives, two passenger cars, one combination car, twenty box cars, seventy flat cars, three ore cars, five hand or track cars, and necessary tools for track repairs; of the thirty miles of the Reno Division, two locomotives, two passenger cars, and thirty flat cars, and the said railroad company, party of the second part, covenants and agrees to pay to the party of the first part for the railroad, completed and constructed as aforesaid, including the equipment, the sum of two hundred and fifty thousand dollars in lawful money and seven hundred thousand dollars in the first-mortgage bonds and seven hundred and fifty thousand dollars in the capital stock of said railroad company, at par, for the Carson Division, including the Virginia Branch, being in all fifty miles, more or less. The sum of one hundred thousand dollars in lawful money, and three hundred and ten thousand dollars in the first-mortgage bonds, and four hundred and fifty thousand
179 dollars in the capital stock of said railroad company, at par, for the Reno Division as far as Beckwith Pass, being thirty miles, more or less; the sum of three hundred and fifty thousand dollars in lawful money and eight hundred and forty thousand dollars in the first-mortgage bonds and seventeen hundred thousand dollars in the capital stock of said railroad company, at par, for the Bodie Division, being one hundred and five miles, more or less, and amounting in the aggregate to seven hundred thousand dollars in lawful money and eighteen hundred and fifty thousand dollars in the first-mortgage bonds and twenty-nine hundred thousand dollars in the capital stock of the said railroad company, at par, for the one hundred and eighty-five miles, more or less, constructed and equipped, and the payments to be made in the following manner: On or before the first day of September proximo the sum of five hundred dollars case; upon the shipment of the first one thousand tons of rails to Reno, twenty thousand dollars in cash, and upon the arrival
180 of said rails at Reno one hundred and fifty thousand in the first-mortgage bonds and three hundred thousand dollars in the stock; upon each subsequent shipment of rails, splices, and spikes for each one thousand tons, one hundred and twenty-five thousand dollars in the first-mortgage bonds and three hundred thousand dollars in the stock; upon completion of each fifteen miles of grading, fifteen thousand dollars in cash; upon delivery of each ten thousand ties at Reno or elsewhere on the line of the road, three thousand dollars in cash; upon completion of each fif-

teen miles of track, five thousand dollars in cash; upon completion of each bridge of over fifty feet in length, five thousand dollars in cash; upon completion of each one thousand feet of trestle-work, five thousand dollars in cash; upon completion of each five engine-houses or other buildings, five thousand dollars in cash; upon completion of each two hundred feet of tunnel, seven thousand dollars in cash; upon delivery at Reno or elsewhere upon the line of the road of each locomotive, ten thousand dollars in cash; of each two passenger
181 cars, four thousand dollars in cash; of three combination cars, five thousand dollars in cash; of each five ore cars, three thousand dollars in cash; of each ten box cars, eight thousand dollars in cash; of each twenty-five flat cars, twelve thousand dollars in cash; of each two hand or track cars, with tools, five hundred dollars in cash. Upon completion of each division as aforesaid, final settlement to be made within ten days by payment to said party of the first part of all balances of stock and bonds and cash. All cash payments under this contract shall be made at Reno, Nevada, unless otherwise agreed, and all payments of stock and bonds shall be made in the city of New York.

If said party of the second part shall not be able at the time fixed for the final settlement to pay said party of the first part the balance of the cash payments due him for any cause, then said party of the first part shall receive biweekly all the net receipts of said railroad, after deducting the working expenses and the ac-
182 cruing interest on its first-mortgage bonds, until said balance shall be fully paid, and shall also receive further, as security for the payment of said balance, assignments from said company of all moneys owing to it for stock subscriptions. If said company shall fail at any time to pay over said net receipts or to assign said stock subscriptions as aforesaid, then said party of the first part is hereby empowered and shall take control of all receipts and income of said road, as provided in section 26 of this contract, including the penalty therein stated; and said party of the second part further agrees that the whole amount hereinbefore covenanted to be paid to the party of the first part shall be paid in any event on or before the thirty-first day of March, A. D. 1881.

24th. The party of the second part further covenants and agrees to deposit in the hands of some person hereafter to be named by said party, and acceptable to the party of the first —, in New York city, on or before October first, A. D. 1880, the sum of fifty thousand dollars in cash, or so much thereof as said company shall by strenuous effort have realized from the collections of subscriptions to its
183 capital stock to that date, and on or before October first, A. D. 1880, twenty-nine hundred thousand dollars of the capital stock of said railroad company, and on or before October fifteenth, A. D. 1880, eighteen hundred and fifty thousand dollars of first-mortgage bonds of said company, all to be applied to the carrying out of this contract; and it is further agreed that in the event of a failure to agree upon any other custodian for the securities that Gen. C. T. Christensen shall act in that capacity.

25th. In the event that the party of the second part (on account

of the benefits to accrue from a speedy completion of the work) shall demand from the party of the first part to furnish rails costing more than eighty dollars per ton, delivered at Reno, the excess of cost over that price is to be paid to the party of the first part by the railroad company by applying one-half the surplus earnings of the road, after paying expenses and interest, until the whole amount is liquidated.

26th. In the event of any failure at any time of the party
184 of the second part to make a cash payment, as specified in this contract, the party of the first part shall receive biweekly all the net receipts of said railroad after deducting the working expenses and the accruing interest on its first-mortgage bonds until such deficiency shall be fully paid. If such railroad company shall fail at any time to pay over said net receipts as aforesaid, then said party of the first part shall be entitled and is hereby empowered to take control of all the receipts and income of said road and to pay himself out of the same to the extent of such deficiency, after first paying out therefrom the proper operating expenses and proportionate interest upon the first-mortgage bonds during the period of his control, and shall, as soon as the deficiency is wholly paid or received by him, return the control of said receipts and income to said company. During such control of receipts and income said party of the first part shall render an account to the auditor or comptroller of the party of the second part of his receipts and expenditures, as aforesaid, at the end of every two weeks after he shall take
185 possession thereof under this clause; and whenever at any of said accountings it shall appear that said party of the first part shall have received from said road, after deducting the aforesaid expenditures, the amount due him as aforesaid, he shall deliver up possession of said road to said party of the second part and shall pay over to it, on demand, any surplus there may be belonging to said party of the second part, under a penalty of double the income of said road during the time of any unauthorized detention.

In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by its president and secretary thereunto, duly authorized by resolution of its board of directors, and caused its seal to be attached this twenty-sixth day of August, A. D. 1880, at Carson City, Nevada.

THOMAS MOORE. [SEAL.]
NEVADA AND OREGON RAILWAY CO.,
By A. J. HATCH, *President.* [SEAL.]

Attest:
[CO. SEAL.] JAMES R. JUDGE, *Secretary.*

In presence of—
MARK PARISH.

186 STATE OF NEVADA, } ss:
County of Washoe, }

On this twenty-eighth day of August, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described in and who executed said annexed instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes thereto mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARISH, *Clerk.*

STATE OF NEVADA, } ss:
County of Washoe, }

On this twenty-eighth day of August, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio*
187 clerk second district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known to me to be the person described in said instrument as such president, and who executed the same as such president, who, being by me duly sworn, did depose and say that he resided in Reno, Nevada; that he was the president of the Nevada and Oregon Railway Company, the corporation named in said instrument as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same by virtue of the authority of the board of directors of said company for the uses and purposes therein mentioned freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed
188 the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARISH, *Clerk.*

Endorsed: Filed for record, at request of Wm. Webster, October 24, 1881, at 15 min. past 3 p. m, and recorded on pages 444–'54, in Book A of Bonds and Agreements, records of Washoe county, Nevada. Jno. B. Williams, Co. recorder.

189 EXHIBIT "B." G. W. C., Ex.

Articles of agreement made and concluded this fourth day of December, in the year of our Lord one thousand and eight hundred

and eighty, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and The Nevada and Oregon R. R. Company of the State of Nevada, party of the second part, witnesseth:

That whereas the aforesaid parties entered into a contract on the twenty-sixth day of August, A. D. 1880, for the construction and equipment of 185 miles of said Nevada and Oregon R. R.; and whereas since that date it has been found necessary to change the time and order of performance and of payments under said contract, thus rendering it indispensable and equitable to supplement said contract:

Therefore, in consideration of the above and of the sum of one dollar paid to each party by the other, the receipt of which is hereby severally acknowledged, it is hereby agreed as follows:

First. The Reno Division as far as a point near Beckwith Pass is to be first constructed and equipped, and in the event the total distance, including sidings, shall exceed 31 miles the party of
190 the second part to pay extra for such excess of distance at the rate of $1.20 per foot lineal for the extra rails, fastenings, spikes, ballasting ties, switches, frogs, and track-laying complete upon such extra length of line.

Second. Any dry masonry required upon the line between Reno and the temporary terminus aforesaid shall be paid for by the company extra at the rate of $2.50 per cubic yard.

Third. For additional equipment the company shall pay extra the sum of $15,000, and all the above extra payments are irrespective of the extra payments provided for in the contract of August 26th aforementioned, and shall be payable at convenience of the Co. at or before final settlement with contractor for the present work.

Fourth. The first cash payment of $500 to contractor shall be made on or before January 1st, A. D. 1881, instead of Sept. 1st, 1880.

Fifth. Upon shipment of 1,000 tons of rails and splices, the company to pay the contractor $20,000 in cash; and upon arrival of same at Reno, $150,000 in 1st-mortgage bonds and $300,000 stock; and upon shipment of balance of rails for the present work, $160,000 in 1st-mortgage bonds and $150,000 in stock.

191 Sixth. The company shall deposit with trustee in New York, on or before January 10th, A. D. 1881, $10,000 in cash and the $450,000 stock, and on or before January 25th, 1881, the $310,000 in the 1st-mortgage bonds.

Seventh. Nothing in this contract is to be construed as abating or impairing any portion of the contract of August 26th, A. D. 1880, which is hereby extended in all matters not conflicting with the provisions of this instrument, and the work under which is to be undertaken upon the 50 miles or 155 miles upon 30 days' notice at any time within one year from date, upon evidence furnished by the company and satisfactory to the contractor as to the fulfillment of the condition regarding stock subscriptions.

Eig-th. The entire stock to be issued upon the line from Reno to the temporary terminus, as herein stated, shall be limited to $600,000 without reference to any excess in distance over 30 miles, and the 1st-mortgage bonds upon the same to $310,000.

Ninth. The work of construction shall be promptly commenced upon notice from the company and satisfactory evidence to the contractor of the proper, prompt obtaining of right of way and of the realization of $100,000 cash from stock subscriptions during
192 progress of the work, and the 30 miles shall be completed and equipped within 5 months from the date of commencing the work of graduation.

Tenth. The contractor shall allow and pay to the company, in installments, as needed upon this work of thirty miles, the total sum of $4,000 for right of way, and the total sum of $3,000 for engineering, stationery, and incidentals, and any excess over such totals shall be provided and paid by the company out of the $50,000 reserve stock or the proceeds thereof.

Eleventh. The contractor shall furnish additional equipment as follows: 1 combination car, 16 box cars, 4 ore cars, 2 hand cars, and track tools.

Twelfth. It is further mutually agreed that the average haul of material excavated from any cut on line of this work shall not exceed three hundred feet, and any surplus of material excavated may be wasted at convenient adjacent points, and all said material shall be measured in excavation, and whatever further material may be required and which shall be borrowed and deposited in embankments shall be measured in embankment and paid for accordingly.

193 Thirteenth. The chief engineer of the company shall, within 30 days from active commencement of graduation, measure for progress estimates, and shall within 10 days thereafter furnish the same to the company and contractor, and shall thereafter perform the same duty at each interval of 30 days.

Fourteenth. In the event that for mutual convenience it should be deemed advisable to avoid delays incident to communicating with Mr. S. H. H. Clark or Jonathan Dwight, it shall be permitted, whenever there may be perfect agreement between the president of this company and the contractor, for payments to be made under this contract whenever due, and in such cases information of the same may be conveyed to Mr. Clark or Mr. Dwight with reasonable promptitude by letter.

In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors, and caused its seal to be attached this fourth day of December, A. D. 1880, at Reno, Nevada.

THOMAS MOORE. [SEAL.]
NEVADA AND OREGON RAILROAD COMPANY,
By A. J. HATCH, *President.* [SEAL.]

194 Attest:
[SEAL.] WM. C. STARR, *Sec'y.*

In presence of—
MARK PARRISH.

STATE OF NEVADA, } ss:
County of Washoe, }

On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parrish, the county clerk and *ex officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed said annexed instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARRISH, *Clerk.*

STATE OF NEVADA, } ss:
County of Washoe, }

195 On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parrish, the county clerk and *ex officio* clerk second district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known to me to be the person described in said instrument as such president and who executed the same as such president, who, being by me duly sworn, did depose and say that he resided in Reno, Nevada; that he was the president of the Nevada and Oregon Railroad Company, the corporation named in said instrument as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same by virtue of the authority of the board of directors of said company for the uses and purposes therein mentioned freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARRISH, *Clerk.*

196 EXHIBIT C. G. W. C., Ex.

Articles of agreement made and entered into this fourth day of December, in the year of our Lord eighteen hundred and eighty, between Thomas Moore, of Elizabeth, New Jersey, and the Nevada and Oregon R. R. Co., witnesseth:

That whereas there is necessarily considerable delay in carrying out the provisions of the contract (or the greater part thereof) made between said parties on the 26th day of August, A. D. 1880; and

whereas it is believed that the necessary surveys can be completed in the early ensuing spring, and that the 170 miles, more or less, of the Reno Division from near Beckwith Pass to the Oregon line can be built and equipped on the same basis as already agreed upon for the first 30 miles of said division:

Now, therefore, it is agreed between the parties hereto that on the 1st day of June, A. D. 1881, or so soon prior to said date as $500,000 valid stock subscriptions can be obtained upon said 170 miles, the company shall notify the contractor, and he shall promptly satisfy himself as to the said subscriptions being available for said construction and equipment, and shall within 30 days thereafter commence the work of construction and complete the same with proper equipment within 12 months from date of notice from com-
197 pany, and the company shall pay him for the same, in reasonable installments as the work progresses, a total of $500,000 in cash and $1,700,000 in first-mortgage bonds (the same being total issue upon said line) and $2,850,000 in the capital stock (out of a total issue of $3,400,000 upon the said line).

In witness whereof the party of the first part hath hereunto set his hand and seal and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors, and caused its seal to be attached this fourth day of December, A. D. 1880, at Reno, Nevada.

THOMAS MOORE. [SEAL.]
NEVADA AND OREGON RAILROAD COMPANY, [SEAL.]
By A. J. HATCH, *President.*

Attest:
[SEAL.] WM. C. STARR, *Sec'l'y.*

In presence of—
MARK PARRISH.

STATE OF NEVADA, }
County of Washoe, } *ss:*

On this seventh day of December, A. D. 1880, personally appeared before me Mark Parrish, the county clerk and *ex*
198 *officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed said annexed instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARRISH, *Clerk.*

STATE OF NEVADA, }
County of Washoe, } ss:

On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parrish, the county clerk and *ex officio* clerk second district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known to me to be the person described in said instrument as such president and who executed the same as such president, who,
199 being by me duly sworn, did depose and say that he resided in Reno, Nevada; that he was the president of the Nevada and Oregon Railroad Company, the corporation named in said instrument as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same by virtue of the authority of the board of directors of said company, for the uses and purposes therein mentioned, freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] MARK PARRISH, *Clerk.*

200 EXHIBIT D. G. W. C., Ex.

Articles of agreement made and concluded this first day of February, in the year of our Lord one thousand eight hundred and eighty-one, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth:

That whereas the aforesaid parties entered into a contract on the twenty-sixth day of August, A. D. 1880, for the construction and equipment of 185 miles of said Nevada and Oregon railroad, and again, for reasons therein recited, did enter into a supplemental contract upon the fourth day of December, A. D. 1880; and whereas since said last date said party of the first part has commenced work at the request of the board of directors of said Nevada and Oregon Railroad Company, by resolution of December 21st, 1880, the board therein assuring him of the filling of the stock subscriptions to the amount of $100,000 without delay; and whereas the party of the second has failed to obtain the required amount of subscription and the board, by resolution of January 15th, 1881, has authorized the vice-president of the company, Hon. Geo. L.
201 Woods, to enter into such further supplemental contract as may be necessary:

Now, therefore, in consideration of the above and of the sum of one dollar paid to each party by the other, the receipt of which is hereby severally acknowledged, it is hereby agreed as follows:

First. The party of the second — is to complete stock subscription list to amount of $20,000 on or before February 20th inst. and to settle all claims against the company to said date, including payment in full to contractor for labor and materials and advances to said date.

Second. The party of the first part, at request of the party of the second part, is to make diligent effort to secure the balance of $80,000 stock subscriptions (heretofore a part of the guaranteed performance by the company), and on or before March 31st proximo to notify the party of the second part if successful, and thereupon to commence and carry through the work and equipment of line to junction near Beckwith Pass with vigor and dispatch, and complete the same within 90 days thereafter, and if not successful, then the condition as to the obtaining $100,000 stock subscription to remain in full force as a duty of the party of the second part as per preceding contracts.

Third. The party of the second part is to deliver to the
202 party of the first part the $450,000 of stock as soon as engraved and certificate can be signed, and the $310,000 first-mortgage bonds as soon as engraved and can be properly signed, and all on or before March 31st proximo.

Fourth. The party of the second part is to deposit in such bank or banks as may be designated by the party of the first part, immediately upon receipt thereof, all moneys, checks or drafts, or coin obtained subsequent to February 20th inst. from payment of stock subscriptions, the same to be held inviolate to provide for any or all payments under the contracts with the party of the first part.

Fifth. The party of the first part is hereby permitted to use and lay in tracks rails of 30 lb. weight per lineal yard exclusively, and is relieved from the demand for any heavier rail upon the line to Beckwith Pass.

Sixth. Any cash payment or balance which may remain due to the party of the first part at conclusion of the work under this contract and the preceding ones shall be made by sale, at par, of any reserve stock remaining in treasury or by delivery to the party of the first part of second-mortgage bonds at the rate of eighty per cent. of their face value.

Seventh. Nothing in this contract is to be construed as
203 abating or impairing the rights of either party hereto, as provided in the preceding instruments hereinbefore referred to, or *or* as in any way effecting or impairing said instruments, and this contract is hereby declared to be supplemental and subsidiary to them, and only for the purpose explicitly stated herein.

In witness whereof the party of the first part hath hereunto set his hand and seal and the party of the second part has caused these presents to be signed by its vice-president, at the city of New York, the day and year first above written.

THOMAS MOORE. [SEAL.]
GEO. L. WOODS, [SEAL.]
Vice-President Nevada-Oregon Railroad Company.

The foregoing contract is hereby ratified by resolution of the board of February 11th, 1881.

In witness whereof I have hereunto set my hand and affixed the corporate seal of the company this 12th day of February, A. D. 1881, at the office of the company, Reno, Nevada.

[CO. SEAL.] WM. C. STARR, *Secretary.*

204 EXHIBIT E. G. W. C., EX.

This agreement, made and entered into this 26th day of April, A. D. 1881, between the Nevada and Oregon Railroad Company, a corporation organized under the laws of the State of Nevada, on the 25th day of April, A. D. 1881, party of the first part, and Thomas Moore, of the city of Elizabeth, State of New Jersey, party of the second part.

Whereas the The Nevada and Oregon Railroad Company, a corporation organized under the laws of the State of Nevada on, to wit, the 1st day of June, A. D. 1880, and said Thomas Moore have heretofore entered into certain contracts whereby the said Moore, in consideration of certain covenants and promises on the part of said last-named corporation in said contracts expressed and contained, covenanted and agreed with said last-named corporation to build and equip, as in said contracts provided, a certain railroad and the several sections thereof in said contracts described; and

Whereas the said last-named corporation has sold and assigned to the party hereto of the first part all its corporate rights, privileges and franchises, rights of way, land and estate, and all its property, real and personal, of whatsoever nature or description, and choses in action, including said contracts:

Now, therefore, this agreement witnesseth that the parties
205 hereto, for and in consideration of the said sum of one dollar, lawful money of the United States, by each to the other paid, the receipt whereof is hereby acknowledged, do mutually promise, covenant, and agree the one with the other to adopt each and all of said contracts as contracts between the party hereto of the first part and the party hereto of the second part, it being mutually understood and agreed by and between the parties hereto that the party hereto of the first part shall be bound to the party hereto of the second part to keep and perform all the covenants and agreements in said contracts expressed on the part and behalf of the said the The Nevada and Oregon Railroad Company, a corporation incorporated on, to wit, the 1st day of June, A. D. 1880, and that the said Moore, the party of the second part, shall be bound to the party of the first part to keep and perform all the prvisions and covenants in said contracts expressed to be kept and performed by and on the part of the said Moore as fully to all intents and purposes as though each and all of said contracts were originally made and entered into between the parties hereto.

In witness whereof the party of the first part has hereunto affixed its corporate seal and caused these presents to be attested by its

president and secretary and the party of the second part has hereunto set his hand and seal the day and year first above written.

[CO. SEAL.] NEVADA AND OREGON RAILROAD COMPANY,
By GEO. L. WOODS, *President.*
S. C. SCOVILLE, *Secretary.*
THOMAS MOORE. [SEAL]

206 (Endorsed:) Nevada and Oregon Railroad Company with Thomas Moore. Agreement. Dated April 26, 1881. Filed for record at request of Wm. Webster Oct. 24, 1881, at 23 min. past 3 p. m., and recorded on pages 460–'1, in Book A of bonds and agreements, records of Washoe county, Nevada. Jno. B. Williams, Co. recorder.

207 EXHIBIT F. G. W. C., Ex.

Articles of agreement made and entered into this twenty-fourth day of May, in the year of our Lord eighteen hundred and eighty-one, between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth:

That whereas the The Nevada and Oregon Railroad Company, incorporated June 1st, A. D. 1880, did, on the fourth day of December, A. D. 1880, enter into a contract with the said Thomas Moore for the construction and equipment of 170 miles, more or less, of the Reno Division from near Beckwith Pass to the Oregon line;

And whereas said company by deed conveyed all its property, rights, and contracts to the Nevada and Oregon Railroad Company, incorporated April 25th, A. D. 1881;

And whereas said latter-named company has assumed all contracts of the The Nevada and Oregon Railroad Company;

And whereas unforeseen and unavoidable delays have occurred, rendering it impossible to commence the contemplated work as soon as expected:

Now, therefore, in consideration of the above and of the sum of one dollar paid to each party by the other, the receipt of which is hereby severally acknowledged, it is hereby agreed between the parties hereto that the aforesaid contract shall be extended in full in all respects for the term of one year.

208 In witness whereof the party of the first part hath hereunto set his hand and seal and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors, and caused its seal to be attached this twenty-fourth day of May, A. D. 1881, at Reno, Nevada.

THOMAS MOORE. [SEAL.]
NEVADA AND OREGON RAILROAD CO.,
[CO. SEAL.] By GEO. L. WOODS, *President,*
S. C. SCOVILLE, *Secretary.*

STATE OF NEVADA, }
County of Washoe, } *ss:*

On this 30th day of May, A. D. one thousand eight hundred and eighty-one, before me, R. S. Osburn, county clerk and *ex officio* clerk of the second judicial district court in and for said county of Washoe, personally appeared George L. Woods, president, and S. C. Scoville, secretary of the Nevada and Oregon Railroad Company, a corporation, &c., personally known to me to be the individuals described in and who, as president and secretary, respectively, and in the name of the said Nevada and Oregon Railroad Company, executed
209 the annexed and foregoing instrument as the party of the second part thereto, and they and each of them duly acknowledged to me that they, as president and secretary of said company, executed the same freely and voluntarily as and for the act and deed of said Nevada and Oregon Railroad Company, and for the uses and purposes therein mentioned; and on said 30th day of May, A. D. 1881, also personally appeared before me, R. S. Osburn, county clerk and *ex officio* clerk of said second judicial district court in and for said Washoe county, Thomas Moore, personally known to me to be the individual described in and who executed the said annexed instrument as the party of the first part thereto, and he acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said district court the day and year hereinbefore written.

[SEAL.] R. S. OSBORN, *Clerk*,
By W. L. KNOX, *Deputy*.

210 EXHIBIT G. G. W. C., Ex.

This agreement, made the twenty-fifth day of March, A. D. eighteen hundred and eighty-two, by and between Thomas Moore, of the city of Elizabeth, in the county of Union and State of New Jersey, party of the first part; the "Nevada and Oregon Railroad Company," a corporation organized and existing under and by virtue of the laws of the State of Nevada, party of the second part; Daniel W. Balch, of San Francisco, California, individually and as attorney-in-fact for H. J. MacMurray, A. H. Manning, W. F. Berry, and C. A. Bragg (the principal creditors of said railroad company and of said Thomas Moore), party of the third part, and Alvin Burt, Esq., of the city, county, and State of New York, party of the fourth part, witnesseth:

That whereas said Thomas Moore, party of the first part, has heretofore entered into certain contracts with the "Nevada and Oregon Railroad Company," party of the second part, for the building and equipment of about three hundred and fifty-five miles of its railroad and branches, as evidenced by six contracts now on record in the State of Nevada;

And whereas, after completing thirty-two miles of grading on

first section north from Reno, in said State of Nevada, and also
211 commencing the grading on the next one hundred and seventy miles running north, as well as providing certain rolling stock, ties, engine-house, switches, and about seventeen miles of main track, the contractor, party of the first part hereto, has become embarrassed and his principal creditors have already made sale of his capital stock (as on books of said railroad company shown) and of his tools and other property as a measure of security; and whereas he, the said party of the first part hereto, is the owner of one hundred of the first-mortgage bonds of the said The "Nevada and Oregon Railroad Company," being the balance out of the three hundred and ten bonds paid to him by said company under his contracts in the month of June, A. D. eighteen hundred and eighty-one; and whereas, under contract with Moran Brothers, bankers of New York, the said one hundred bonds are to be paid for by them as sections of the next fourteen miles of track shall be laid down, thereby entitling the contractor, party of the first part hereto, to eighty thousand dollars, with accrued interest (amounting to about two thousand dollars additional) to date;

And whereas other assets, understood to have been bought in by the principal creditors aforesaid (irrespective of the capital stock,
212 which has now only a nominal value, irrespective of rolling stock, which the party of the first part disclaims the ownership of, and irrespective of timbers or ties which may have been delivered to contractor, payable for by him upon completion of a specified delivery), are estimated to be worth to the contractor, said party of the first part, some two thousand dollars;

And whereas the work already performed under the contracts aforesaid entitles the contractor, said party of the first part, to a total claim in cash against said "Nevada and Oregon Railroad Company" of fully one hundred and sixty-seven thousand dollars, less one hundred and thirty-two thousand dollars received (the last-named sum including nine thousand five hundred dollars advanced to said railroad company by Messrs. MacMurray & Balch in November, eighteen hundred and eighty-one), leaving a balance now due to said party of the first part of about thirty-five thousand dollars;

And whereas the said party of the first part has already paid to the said railroad company the sum of seven thousand dollars in full towards enabling said railroad company to pay for right of way, incidentals, &c.;

And whereas it was originally contemplated that said seven thousand dollars should be partially used to pay locomotive enginemen, firemen, and for fuel, oil, and waste during the construction of said thirty-one miles;

213 And whereas moneys for these purposes have been advanced in addition thereto by the party of the first part, to be settled at final estimate;

And whereas the party of the first part has also advanced moneys and become responsible for legal expenses and retainer in injunction suit brought about by conduct of former directors of said "Nevada and Oregon Railroad Company," and has also been obliged to

contest suit of Philetus Bates, whose claim is principally against the said railroad company, in fact, and with these matters equitably adjusted and with about fifteen thousand dollars' worth of rolling stock to be furnished by contractor, there will remain due to the party of the first part, on final estimate, from said railroad company about thirty thousand dollars (after he has deducted a proper amount for certain equipment not necessary, but which the contract demanded);

And whereas these claims above recited, together with twelve thousand four hundred dollars of coupons, representing interest due December 1st, 1881, on the first-mortgage bonds of said railroad company, and about sixteen hundred dollars' worth of tools, &c., aggregate to the party of the first part assets amounting to about one hundred and sixty-three thousand dollars cash, besides certain capital stock of said railroad company said to have been brought in by said principal creditors, viz., fifteen hundred and eighty shares, property of the party of the first part, forty shares transferred
214 by him to A. D. Mellick as a portion of commission for assisting in bond sale, and one hundred and five shares transferred through several parties, and now the property, in fact, of F. F. Fowler by cash purchase (the forty and one hundred and five shares last above mentioned being part of the stock which came to the contractor under his contracts, and which Messrs. Mellick & Fowler are, respectively, entitled to have transferred to them on the books of the company).

It being understood that the above recital of assets does not cover a claim of the party of the first part against Carter Brothers, of San Francisco, California, the same not being included in this settlement.

And whereas it is claimed that the debts of the party of the first part, including amounts already due and those falling due upon complete delivery of certain articles, and also including the rolling stock necessary but not yet purchased, are, approximately, as follows, viz:

Schedule.

Webster & Deal, balance of retainer			$2,500 00
C. A. Bragg & Co., balance on ties			4,800 00
Hymers & Comstock, carriage hire			22 00
G. L. McFarlin, blacksmithing (about)			270 00
Manning & Berry, sundry supplies "			13,000 00
J. Frey, hay			50 00
C. A. Bragg & Co., lumber			3,500 00
215 A. J. Clark, sundry supplies	(about)	--	1,600 00
Henry Ruhe, meat	"	--	1,480 00
Reno Foundry, castings, &c.	"	--	125 00
J. S. Sturgeon, commissions, &c.	"	--	110 00
D. Evans, sundry supplies	"	--	1,380 00
Virginia & Truckee R. R. Co., track material	"	--	325 00
October labor, balance	"	--	3,700 00
October labor, Chinese	"	--	5,853 00

November labor, Chinese	(about)	--	140 00
November labor, balance	"	--	1,920 00
December labor, balance	"	--	2,550 00
Parker, Laforge, McNally, Kendall, Knox, and watchmen not on pay-roll	"	--	1,200 00
H. J. MacMurray, interest	"	--	600 00
Rails, fastenings, and freights	"	--	23,000 00
Cost of completing fourteen miles, including $15,000 for rolling stock	"	--	72,000 00
Items not fully reported, estimated at	"	--	500 00
			140,625 00
A. D. Mellick, balance of commis.			800 00
Thomas Cogan, salary to March 22, '82			400 00
Thomas Cogan, traveling expenses			175 00
Three counsel, New York & New Jersey, & exp's (about)			2,000 00
Board & incidental expenses of Cogan & *als.*	"		300 00
Total			144,300 00

showing a fair margin of cash assets over and above all liabilities belonging to the party of the first part, the same not being immediately available owing to the embarrassment of all persons
216 concerned; and whereas said railroad company, on account of its embarrassments, is unwilling to avail itself of its right under said contracts to complete the construction and track-laying upon the first thirty-one miles of its said railroad, charging cost of the same against said party of the first part in settlement; and whereas the parties hereto are mutually desirous that such settlement shall be had as will enable all said parties to become extricated from their present difficulties and embarrassments:

Now, therefore, to that end, in consideration of the premises and of the sum of one dollar by each of the parties hereto to the others paid, the receipt whereof is hereby severally acknowledged, and in further consideration of the faithful performance of all the conditions and covenants hereinafter named, it is hereby mutually covenanted and agreed by and between the several parties hereto as follows:

Section first. The party of the first part shall, as soon as practicable after the execution and delivery of this agreement, execute and deliver to Alvin Burt, Esq., party of the fourth part, in trust, nevertheless (for delivery by him as hereinafter specified), full and complete assignments, made out in the name of such person as the party of the third part may designate, covering his six contracts
217 with the "Nevada and Oregon Railroad Company" above specified, covering his contract with Moran Brothers concerning the first-mortgage bonds of said railroad company, covering his right of ownership in the one hundred first-mortgage bonds of said railroad company now in the possession of Moran Brothers, of New York, and covering all claims of the party of the first part against

said railroad company for cash payments now due or falling due at time of final estimate for any and all work performed on first section of about thirty-one miles, as above recited.

Section second. The said party of the first part shall, as soon as practicable after the execution of this agreement, deposit with Alvin Burt, Esq., party of the fourth part, in trust, nevertheless, for cancellation and delivery as hereinafter specified, all coupons belonging to him, ($12,400) twelve thousand four hundred dollars in amount, representing interest due up to December first, eighteen hundred and eighty-one, on the (310) three hundred and ten first-mortgage bonds of said railroad company, which bonds were paid to the party of the first part on his contracts aforesaid.

Section third. The party of the first part shall, as soon as practicable after the execution of this agreement, deposit with said Alvin Burt, Esq., in trust, nevertheless, for delivery to Moran Brothers
218 as hereinafter specified, two certain acceptances issued by said Moran Brothers to said Thomas Moore (upon fifty of the one hundred first-mortgage bonds above specified, now in their hands) for ($15,000) fifteen thousand dollars and ($25,000) twenty-five thousand dollars, respectively, together with the original certificate for fifteen hundred and eighty shares of capital stock issued to said Moore and sold out as a measure of security by his principal creditors as aforesaid.

Section fourth. The party of the third part, for himself individually and as attorney-in-fact of and for H. J. MacMurray, A. H. Manning, W. F. Berry, and C. A. Bragg (the principal creditors as aforesaid), hereby assumes and agrees to pay all debts, liabilities, and obligations of the party of the first part heretofore incurred in connection with the contracts for the construction and equipment of the "Nevada and Oregon railroad," which debts and obligations are hereinbefore approximately recited in the list or schedule shown on page five of this agreement.

Section fifth. The parties of the second and third part- shall, on or before June first, eighteen hundred and eighty-two, execute, procure, and deliver to the party of the first part, from the said "Nevada and Oregon Railroad Company" and from all the creditors in the said schedule above named, a full and unconditional release or
219 releases in writing, properly executed and acknowledged, freeing and forever discharging said party of the first part from all indebtedness, claims, charges, demands, suits, and liabilities whatsoever which may have been incurred by him in his capacity of contractor for the construction and equipment of said "Nevada and Oregon railroad:" Provided, nevertheless, That if the parties of the second and third part- are unable by June first, eighteen hundred and eighty-two, to procure releases from all said creditors individually, then they shall procure and deliver to the party of the first part a joint and several bond or obligation, to be executed and acknowledged by the "Nevada and Oregon Railroad Company," Daniel W. Balch, H. J. MacMurray, A. H. Manning, W. F. Berry, and C. A. Bragg, conditioned that they will within six months satisfy in full all the claims not so released, specifying the same in

full, and will indemnify and save harmless the party of the first part from all suits, actions, loss, or damage whatsoever arising out of or in any way connected with such unreleased claims; the penalty of said bond to be double the amount of said unreleased claims.

Section sixth. The parties of the second and third part- shall on or before June first, eighteen hundred and eighty-two, procure and deliver to the party of the first part the following notes, drafts, contracts, and agreements, viz:

220 (*a.*) Two certain promissory notes of twenty-six hundred dollars each, made by said Thomas Moore and Frank Field Fowler, severally, as security for Manning & Berry and C. A. Bragg, bondsmen in suit brought by one A. J. Hatch against said "Nevada and Oregon Railroad Company."

(*b.*) A certain draft drawn by said Thomas Moore on Moran Brothers, bankers of New York city, for eighty thousand dollars, left with H. J. MacMurray about October 29th, eighteen hundred and eighty-one, payment of which was refused.

(*c.*) Agreement in writing by said Thomas Moore to give to D. W. Balch five hundred shares capital stock of the "Nevada and Oregon Railroad Company."

(*d.*) Agreement in writing of Thomas Moore aforesaid to give H. J. MacMurray five hundred shares of capital stock of said railroad company.

(*e.*) Agreement of said Thomas Moore to give H. J. MacMurray fifty shares additional of said capital stock; all said notes, drafts, contracts, and agreements to be duly canceled.

Section seventh. The parties of the second and third part- shall on or before June first, eighteen hundred and eighty-two, pay Thomas Moore, party of the first part, or to his order, fifteen hundred and eighty shares of the full-paid capital stock of said The "Ne-

221 vada and Oregon Railroad Company;" shall pay to Frank Field Fowler one hundred and five shares of full-paid capital stock of said "Nevada and Oregon Railroad Company;" shall pay to A. D. Mellick forty shares of the full-paid capital stock of said railroad company, and shall also pay to the widow of Major S. C. Scoville three hundred shares of the full-paid capital stock of said railroad company; the shares paid to Fowler and Mellick, as last above, to be paid out of the stock already issued on the thirty-one miles of railroad lying immediately north of Reno, Nevada.

Section eighth. The parties of the second and third part- shall also, on or before June first, eighteen hundred and eighty-two, release the party of the first part or cause him to be released, by writing properly executed, from his personal subscription to three thousand shares of the capital stock of the "Nevada and Oregon Railroad Company," twenty-seven hundred shares of said stock to be transferred to a person to be named by the party of the third part and a certificate for the remaining three hundred shares of full-paid capital stock of said railroad company to be issued to the order of the party of the first part, as per payment already made.

Section ninth. That the parties of the second and third

222 part- hereby assume all the responsibilities and liabilities of

the injunction suit instituted by said party of the first part in the district court of the first judicial district of the State of Nevada, in the county of Story, and now pending in the United States courts, between said Thomas Moore, plaintiff, Nevada and Oregon Railroad Company and E. D. Wheeler and others, defendants, and hereby covenant and agree to indemnify and save harmless the party of the first part of and from all costs, charges, expenses, loss, or damage by reason thereof.

Section tenth. The parties of the second and third part-, in consideration of the acts and things to be done herein by the party of the first part, shall, on or before June first, eighteen hundred and eighty-two, pay to the party of the first part (or to any person or persons he may designate) five thousand six hundred and twenty shares (representing five hundred and sixty-two thousand dollars, par value) of the full-paid capital stock of the "Nevada and Oregon Railroad Company" in certificates of such amounts or number of shares as the said party of the first part shall from time to time designate.

Section eleventh. The parties of the second and third part- hereby covenant and agree, for themselves and for the other stock-
223 holders and for the creditors of the party of the first part, as follows, viz:

(*a.*) That Frank Field Fowler shall be continued as vice-president and director of the said railroad company for two years from the date of this agreement, provided that said Fowler shall not be entitled to receive salary as such vice-president except by resolution of the board of directors of said company.

(*b.*) That no second mortgage shall be made, issued, or recorded upon said railroad or any portion thereof; that the issue of first-mortgage bonds thereon shall be limited to ten thousand dollars per mile of completed road, or such an amount that the annual interest charge- thereon shall not exceed eight hundred dollars per mile of completed road, and also that the issue of capital stock of said company shall be limited to twenty thousand dollars per mile of said railroad.

(*c.*) That there shall be no abandonment by the "Nevada and Oregon Railroad Company" or by its stockholders of any rights of said company under its charter for a period of two years from date of this agreement, and in case of any sale of said railroad or any part thereof or of the interest of the party of the third part
224 and his associates therein, or in any part thereof, such sale shall be made in a manner which shall fully protect the interests of the party of the first part and those holding by tranfer under or from him or by his order as stockholder- in said The "Nevada and Oregon Railroad Company," and also in like manner protect the following stockholders of said company or those holding at the time of any such sale by transfer under or from them, viz:

Amy R. Purdy	165 shares.
Lewis Purdy	45 shares.
Henry W. Low	35 shares.

C. A. Elting	40 shares.
E. S. Fowler	50 shares.
S. L. Fowler	50 shares.
F. F. Fowler, trustee for F. R. Fowler	50 shares.
F. F. Fowler, trustee for A. H. Fowler	500 shares.
W. H. A. Brown	100 shares.
Malcolm Peters	100 shares.
George V. Morey	100 shares.
James B. Morey	100 shares.
F. F. Fowler	1,185 shares.
F. F. Fowler	105 shares.
A. D. Mellick	40 shares.
Mrs. S. C. Scoville	300 shares.

(*d.*) That no proceeding shall be taken by said railroad company or by its stockholders or by the party of the third part and
225 his associates during such period of two years aforesaid which will impair the value of the capital stock paid to or held by the party of the first part as above or held by the parties last above mentioned.

(*e.*) That the parties of the second and third part- shall procure and deliver to the party of the first part a joint and several bond or obligation in sufficient amount, signed by the above-named Daniel W. Balch, H. J. MacMurray, A. H. Manning, W. F. Berry, and C. A. Bragg, conditioned that in case it should become necessary for the creditors or trustees at any time to foreclose upon said "Nevada and Oregon railroad," in order to destroy fraudulent claims against said company or upon said road, or for any other purpose whatsoever, then said Moore or his transferees shall receive paid-up capital stock to the amount of seven hundred and fifty thousand dollars in any new company or corporation organized or to be organized for the purpose of conducting and operating the railroad and branches of the said "Nevada and Oregon Railroad Company," and also that the stockholders named in section eleven, article (c), or their transferees shall receive paid-up capital stock in any such new
226 company equal in amount to the shares now held by them or to which they may be entitled.

Section twelfth. The parties of the second and third part- shall, as soon as practicable, not later than June first, eighteen hundred and eighty-two, procure and deliver to the party of the first part an acceptance, to be issued by Moran Brothers, bankers, of New York, similar in terms and expression with the acceptances now in said Moore's hands, as aforesaid, payable on the completion of thirty-one miles of track of said railroad company, and also shall at the same time procure and deliver to the party of the first part a certain promissory note of the "Nevada and Oregon Railroad Company" for five hundred dollars, payable six months from the date hereof, the amount represented by said acceptance and note being hereby determined and allowed the party of the first part to cover his indebtedness as follows, viz:

Three counsel and expenses, about	2,000	00
A. D. Mellick, balance of commission	800	00
T. Cogan, salary	400	00
T. Cogan, traveling expenses	175	00
Cogan and others, incidental expenses, about	300	00

and the following debts of said "Nevada and Oregon Railroad Company," viz:

American Bank Note Company	175	00
Ketcham, for instruments	195	00
227 J. H. Moore, engineering, about	188	00

Any deficiency between the debts last stated and amount of said note and acceptance to be paid by the party of the first part out of his claim against Carter Brothers, of San Francisco, California, hereinbefore reserved by the party of the first part.

Section thirteenth. The parties of the second and third part- shall procure from Moran Brothers (at time of delivery to them of the said acceptances by the trustees herein named) a guarantee that the proceeds of the said one hundred first-mortgage bonds belonging to the party of the first part now in their hands (except the acceptance of thirty-five hundred above mentioned to be issued to said Thomas Moore and one of fifteen hundred dollars to be issued to Godeffroy & Co.) shall be used and expended in the construction and completion of said thirty-one miles of railroad of the "Nevada and Oregon Railroad Company."

Section fourteenth. The party of the second and third part- shall execute, cause to be passed, and procure all resolutions of said company and all other papers, writings, and documents requisite or necessary to properly carry this agreement into effect.

Section fifteenth. Alvin Burt, Esq., of New York city, shall
228 be, and he hereby is, appointed trustee to hold the assignments, acceptances, coupons, and certificates placed in his hands by the party of the first part, and his trust shall expire on the first day of June next, unless this agreement be before that time fulfilled, the duties of said trustee being as follows, viz:

(*a.*) Said trustee shall surrender to Moran Brothers the two acceptances of fifteen thousand dollars and twenty-five thousand dollars above mentioned upon receiving the guarantee of Moran Brothers mentioned in the thirteenth section of this agreement, together with the acceptance of thirty-five hundred dollars and note for five hundred dollars mentioned in the twelfth section of this agreement, and also Thomas Moore's receipt given to Moran Brothers for said acceptances.

(*b.*) Said trustee shall, in the presence of the party of the first part, cancel and deliver up to the Nevada and Oregon Railroad Company or their legal representatives the twelve thousand four hundred dollars, in coupons above mentioned, upon satisfactory evidence of the payment of the acceptance for thirty-five hundred dollars and the note of five hundred dollars mentioned in the twelfth section of this agreement.

229 (*c.*) Said trustee shall surrender to the party of the third part all the assignments mentioned in the first section hereof and the certificate of stock mentioned in the third section hereof whenever he has satisfactory evidence that the parties of the second and third parts have fully complied with the terms and conditions herein mentioned by them to be performed; and it is hereby distinctly understood and agreed that time is of the essence of this contract, and that in case the terms and conditions hereof are not fully complied with by June first, eighteen hundred and eighty-two, then the said trustee shall deliver up to the party of the first part all assignments, contracts, acceptances, coupons, certificates of stock, and all other matters and things deposited or left in trust with him by or for the party of the first part as above provided and specified, and the trust hereby created shall thereupon cease and determine.

(*d.*) Said trustee hereby signifies his acceptance of the trust aforesaid by affixing his signature as a party hereto.

In testimony whereof the parties of the first, third, and fourth parts have hereunto set their hands and seals and the said The "Nevada and Oregon Railroad Company" has hereto set its
230 corporate seal and caused its president to sign these presents the day and year first above set forth.

THOMAS MOORE. [SEAL.]
NEVADA AND OREGON RAILROAD COMPANY,
By DANIEL W. BALCH, *Its President.* [SEAL.]
DANIEL W. BALCH, *Individually and as Attorney-in-Fact for*
H. J. MACMURRAY. [SEAL.]
A. H. MANNING. [SEAL.]
W. F. BERRY AND [SEAL.]
C. A. BRAGG. [SEAL.]
ALVIN BURT. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHARLES F. GLEN.
CHARLES NETTLETON.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Be it remembered that on the 27th day of March, A. D. 1882, before me, Charles Nettleton, a commissioner of the State of Nevada in and for the State of New York, residing in said city of New York, personally appeared Daniel W. Balch, the president of the "Nevada and Oregon Railroad Company," to me personally known to be such, who, being by me duly sworn, did depose and say that he resided in San Francisco, California; that he was the president of the said company; that he knows the corporate seal of said company; that the seal af-
231 fixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like

order as the president of said company; and the said Daniel W. Balch, as such president above mentioned, further acknowledged to me that he had executed the said instrument to be his free and voluntary act and deed and to be the free and voluntary act and deed of said company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this 27th day of March, A. D. 1882.

[L. S.] CHARLES NETTLETON,
Commissioner for Nevada in New York,
117 *Broadway, N. Y. City.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*.

Be it remembered that on this 27th day of March, A. D. 1882, before me, Charles Nettleton, a commissioner of the State of Nevada in and for the State of New York, residing in said city of New York, personally appeared Thomas Moore, Daniel W. Balch, individually, H. J. MacMurray, A. H. Manning, W. F. Berry, and C. A. Bragg, by Daniel W. Balch, attorney-in-fact, and Alvin Burt,
232 personally known to me to be the same persons described in and who executed the foregoing instrument as parties thereto, who acknowledged to me that they had executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed; and the said Daniel W. Balch further acknowledged the same as the free and voluntary act and deed of his constituents above named by authority vested in him by them.

In witness whereof I have hereunto set my hand and affixed my official seal this 27th day of March, A. D. 1882.

No seal.

CHARLES NETTLETON,
Commissioner for Nevada in New York,
117 *Broadway, N. Y. City.*

(Endorsed:) Thomas Moore with the Nevada and Oregon Railroad Company & others. Agreement. Filed for record at request of H. L. W. Knox, Jan'y 3, 1883, at 30 min. past 11 a. m., and recorded on pages 8 to 21, in Book "B" of Bonds and Agreements, records of Washoe county, Nevada. Jno. B. Williams, county recorder. [County seal.]

233 EXHIBIT "H." G. W. C.

Whereas D. W. Balch, acting president of the Nevada and Oregon Railroad Company, contemplates visiting the city of New York in the near future for the purpose and with reference to a settlement of the present financial embarrassments of said company, and it being a matter greatly to be desired on the part of the directors of said company and its *bona fide* stockholders that some amicable adjustment be made between the company and Thomas Moore,

contractor, with reference to such matters of difference as may exist between Thomas Moore and the company arising out of his contract with the company for the construction of its railroad; also any difference that may exist between Thomas Moore and the company regarding such financial matters as may require settlement and adjustment; and whereas

It is the judgment and wish of the board of directors, also of the *bona fide* stockholders, as far as known, of the company that some arrangement be made with Moran Brothers, of the city of New York, who are the bondholders in chief of the company's mortgage bonds hitherto negotiated, regarding the future financial condition of the company and the construction and completion of the company's road as far as the junction near Beckworth Pass, northerly from Reno;

234 And it being also desired that such completed arrangements, so far as the same can be arranged, be made with reference to the future, in general, touching the construction and completion of the road and the money necessary for that end; also such other matters as may be necessarily involved and incident to the above end and purpose:

Be it therefore resolved, That D. W. Balch, acting president of said company, be, and he is hereby, appointed, authorized, and empowered to do everything necessary touching the premises above stated, and that he have full power and authority to arrange and complete all matters whatsoever necessarily involved in the premises above stated, the said company, by its directors, hereby ratifying and making valid and binding upon the company each and all of the acts of the said D. W. Balch, acting president, touching the premises or that may be in any manner included therein.

Be it resolved, That A. H. Manning, the secretary *pro tem.* of this adjourned meeting, held this 13th day of January, A. D. 1882, be, and he is hereby, authorized to sign, certify, and affix the official seal to a certified copy of the preamble and resolution at this meeting passed authorizing and empowering D. W. Balch to do the several acts, matters, and things in the preamble and resolution by this meeting passed.

I hereby certify that the above is a true and correct copy
235 of the resolution authorizing the above-named secretary to the above and foregoing certificate to sign and attach the seal of the company to such certificate.

This is to certify that the above is a true and correct copy of the minutes of the board of directors of the Nevada and Oregon Railroad Company at their adjourned meeting held at the office of the company at Reno, Washoe county, Nevada, on the 13th day of January, A. D. 1882, showing all matters on said minutes appertaining or belonging to the authority of D. W. Balch, acting president, relating to the several matters above stated and included in the above and foregoing preamble and resolution.

In witness whereof I have hereunto set my hand as secretary, acting *pro tem.*, at said meeting of said board of directors of said Nevada and Oregon Railroad Company, and, being now acting as

such secretary *pro tem.*, I have, by direction of the board of directors, caused the seal of the company to be to this certificate attached this 13th day of January, A. D. 1882.

[CORPORATE SEAL.] A. H. MANNING,
Sec't pro tem.

236 EXHIBIT I. G. W. C., Ex.

Article of agreement made and entered into this twenty-third day of March, 1881, between Moran Brothers, of New York, N. Y., party of the first part, and Thomas Moore, of Elizabeth, N. J., party of the second part, witnesseth:

That for and in consideration of the sum of one dollar to each by the other in hand paid, the receipt whereof is hereby severally acknowledged, the party of the first part hereby agrees to pay to the party of the second part, or to his order, the respective sums of forty thousand dollars ($40,000), forty thousand dollars ($40,000), eighty-eight thousand dollars ($88,000), forty thousand dollars ($40,000), forty thousand dollars ($40,000), upon completion of five, ten, twenty-one, twenty-six, and thirty-one miles of the Reno Division of the Nevada & Oregan railroad in Nevada, as hereinafter specified, all in current funds, at the city of New York, against the delivery of the first-mortgage 8 per cent. bonds of the Nevada & Oregon Railroad Co. of Nevada, as hereinafter specified.

237 And the party of the second part hereby agrees to complete the thirty-one miles of the Reno Division of the Nevada & Oregon railroad, in each case including putting down the rails on the track, as follows: Five miles on or about May 15th, 1881; ten miles on or about June 1st, 1881; twenty-one miles on or about July 1st, 1881; twenty-six miles on or about August 1st, 1881; thirty-one miles, more or less, to a point near Beckworth Pass, on or about August 15th, 1881; and the party of the second part agrees to deliver to the party of the first part three hundred and ten first-mortgage bonds of said Nevada & Oregon Railroad Co. of one thousand dollars each as follows: Fifty bonds upon the completion of five miles of said railroad, fifty bonds upon the completion of ten miles, one hundred and ten bonds upon the completion of twenty-one miles, fifty bonds upon the completion of twenty-six miles, and fifty bonds upon the completion of the thirty-one miles, more or less, of the said railroad near Beckworth Pass, all of said bonds to have

238 coupons attached to provide for semi-annual interest payments for the forty-nine years ending June 1st, 1930, interest to be adjusted between the parties hereto in cash at the time of delivery of the last lot of bonds aforementioned.

In witness whereof the parties to this agreement have hereunto set their hands and *sales* this twenty-third day of March, 1881.

MORAN BROTHERS. [SEAL.]
THOMAS MOORE. [SEAL.]

Witness:
R. ROSOGY.

239 EXHIBIT J. G. W. C., EX.

NEW YORK, *April* 26, 1882.

D. W. Balch, Esq., president Nevada & Oregon R. R. Co.:

The Nevada & Oregon Railroad Company, by yourself as president, is hereby authorized to draw upon us, at sight, for the amounts following against the one hundred first-mortgage bonds of the "Nevada & Oregon Railroad Company" heretofore deposited with us by Thomas Moore under his contract with us:

When 19	miles of railroad	north of here	are completed	$8,800
21	miles	"	"	8,800
23	"	"	"	8,800
25	"	"	"	8,800
27	"	"	"	8,800
29	"	"	"	8,800
31	"	"	"	22,200
	Total			75,000

And we obligate ourselves to pay promptly all the said drafts above mentioned, provided each draft is accompanied by an affidavit of the chief engineer in charge of construction, countersigned by the president of the railroad company, that the various sections
240 of the railroad, as above mentioned, have been properly completed and are fit for service: Provided, also, That if the railroad company is able to make arrangements for the cancellation of certain liens of the Chinese & white laborers, amounting in the aggregate to the sum of ten thousand dollars ($10,000), by payments on account, the drafts can be made upon us for $10,400 each instead of $8,800, excepting the last, made on completion of the 31 miles, which shall be for $12,600 instead of $22,200, but such drafts for increased amounts shall, in addition to the engineer's affidavit above alluded to, be accompanied by documentary evidence that one-seventh of the labor liens or labor claims or thereabouts has been duly discharged at the time of making such increased draft or the necessary money for such discharge deposited with the county recorder: Provided, further, That the last draft in order made upon us, whether the same shall be for $22,200 or for $12,600, must be accompanied by a certificate of the county recorder that at the time of making such draft there are no liens outstanding on the
241 Nevada & Oregon railroad and of records other than the first-mortgage bonds and a lien of H. J. McMurray. Such certificate of the county recorder shall be further accompanied by a release from H. J. McMurray to us of such lien, whereby the mortgage bonds outstanding shall be constituted a first & only lien on the property of the "Nevada & Oregon Railroad Company;" such release, however, shall not be recorded by us before January 1st, 1883.

And in consideration of the consent of Thomas Moore, such consent being manifested by his joining herein, we hereby agree with said

Thomas Moore to pay to him the sum of $3,500 upon completion of 31 miles of said Nevada & Oregon railroad, and we agree with said Thomas Moore that no payment shall be made to said "Nevada and Oregon Railroad Company" upon said first-mortgage bonds without the evidence as above required.

And it is hereby further witnessed and agreed that the bonds above referred — in the preceding contract are numbered from 211 to 310, both inclusive; that they are now in possession of Moran
242 Bros., and that said bonds shall become the property of Moran Bros. in proportionate amounts as they are paid for by Moran Bros. from time to time in accordance with this agreement, and meanwhile said bonds to remain in possession of said Moran Bros. without changing their present status.

In witness whereof the said Moran Bros. and Thomas Moore have hereunto attached their hands and seals in presence of witnesses this 26th day of April, 1882.

MORAN BROTHERS. [SEAL.]
THOMAS MOORE. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. KIRSCHMAN.
A. E. GODDEFROY.

$3,500. Received, New York, March 6th, 1882, of Messrs. Moran Bros. three thousand five hundred dollars in full of all my rights under the within contract, which releases Messrs. Moran Bros. from all further liabilities therefore or on account of the bonds therein referred to.

THOMAS MOORE.

Signed, sealed, and delivered in the presence of—
ALVIN BURT.
C. T. GLEN.

243 Endorsed: U. S. circuit court, dist. of Nevada. Union Trust Co. of New York ag'st The Nevada & Oregon R. R. Co. Charles Moran ag'st H. J. McMurray & o'rs. Testimony for complainants taken before Geo. W. Carr, examiner. Published by order of court. Filed Nov. 19, 1883. T. J. Edwards, clerk.

244 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN *et als.*, Complainants,

vs.

H. J. MCMURRAY *et als.*, Defendants.

Testimony for complainants taken at Reno, Nevada, Sept. 21, 22, 25, and Oct. 15th, A. D. 1883, by N. Soderberg, special examiner.

Published by order of court. Filed Nov. 19, 1883.

T. J. EDWARDS, *Clerk.*

245 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners in the Business of Banking in the City and State of New York, Complainants,

vs.

H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WM. Henry, Charles Curtors, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name and Style of the Washoe Mill and Lumber Company; First National Bank, a Corporation Created and Existing under and by Virtue of the Laws of the State of Nevada; Oliver Lonkey and E. R. Smith, Copartners Doing Business under the Firm Name and Style of Lonkey and Smith; W. E. F. Deal, William Webster, David Evans, A. Frazier, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Late Copartners Doing Business at Reno, Nevada; Charles T. Bender, Trustee; A. H. Manning and W. T. Berry, Late Copartners in Trade at Reno, Nevada, Defendants.

246 To the honorable the judges of the circuit court, ninth circuit and district of Nevada:

I herewith submit my report of the testimony on behalf of complainants taken by me in said cause at Reno, Nevada, on the 21st, 22d, and 25th of September, A. D. 1883, and on Oct. 15, 1883.

N. SODERBERG,
Special Examiner.

RENO, NEVADA, *Sept.* 21, 1883.

Pursuant to notice heretofore given by the special examiner, the parties appeared before said examiner by their respective attorneys, the complainants being represented by Robert M. Clarke, Esq., and the defendants by W. E. F. Deal, Esq.

Mr. Clarke offered in evidence the by-laws of the Nevada and Oregon Railroad Company, a corporation defendant herein. Mr. Deal, on behalf of all the defendants in said cause, except the Nevada & Oregon Railroad Company, objected to the admission
247 in evidence of said by-laws on the ground that the same were immaterial and irrelevant, and also objected on the same ground separately on behalf of said railroad company to the admission of said by-laws in evidence against said last-mentioned defendant.

The following is a true and correct copy of said by-laws (Minute Book of N. — O. R. R. Co., p. 37):

By-Laws of the Nevada & Oregon Railroad Company.

Article 1st.

The corporate powers of this company shall be vested in a board of seven directors, and the other officers of the company shall be a president, vice-president, secretary, and treasurer.

Article II.

The principal place of business shall be at Reno, Nevada.

Article III.

On the first Monday of June in each year a meeting of the stockholders shall be held at the company's office, at Reno, at which the directors of the company shall be elected by ballot to serve for one year or until their successors have (been) duly elected and qualified.

248

Article IV.

There shall be a meeting of the board of directors held at the office of the company on the first and third Mondays of each month.

Article V.

The board of directors shall select one of their number to act as president and one as vice-president, who shall act as president in the absence of the president.

The president shall sign all certificates of stock and all contracts and all other instruments which have been authorized by the board of directors. He shall draw all checks or warrants on the treasurer; he shall preside at all meetings of the directors and stockholders; he shall call special meetings of the stockholders whenever he deems it for the interest of the company to do so, and generally shall discharge such other duties as the board may direct.

Article VI.

It shall be the duty of the secretary to keep a record of the proceedings of the board of directors and of the meetings of the stockholders, and shall sign all ce't'f's of stock, checks, or warrants
249 on the treasurer, and shall perform all other duties as the directors may prescribe.

Article VII.

The compensation of all officers of the company shall be fixed by the board of directors.

Article VIII.

The board of directors alone shall have power to make contracts on behalf of the company.

Article IX.

Certificates of stock shall be of such form and device as the board of directors may select, and each certificate shall be signed by the president and countersigned by the secretary."

Mr. Clarke next offered the proceedings of the board of directors of the Nevada and Oregon Railroad Company of November 20th,

1882, found on pages 54, 55, and 56 of Minute Book of N. — O. R. R. Co.

(A copy to be substituted.)

Mr. Deal, on behalf of all the defendants in said cause except the Nevada & Oregon Railroad Company, objected to the admission in evidence of said proceedings on the ground that the same were immaterial and irrelevant, and also objected on the same grounds,
250 separately, on behalf of said railroad company, to the admission of said proceedings in evidence against said last-mentioned defendant.

The following is a true and correct copy of said evidence offered by the complainants:

"RENO, *Nov.* 20, 1882.

Board met in pursuance of adjournment.

Present: A. H. Manning, W. F. Berry, Geo. A. King, and C. A. Bragg.

On motion of A. H. Manning, seconded by C. A. Bragg, the following resolution was unanimously adopted, to wit:

Resolved, That the president of this company be, and he is hereby, authorized and instructed to draft and sign an order upon Union Trust Company of New York to deliver the two hundred and ninety first-mortgage bonds of this company numbered from 311 to 600, both inclusive, to D. W. Balch, or to his order, for the purpose of negotiation and the delivery thereof to purchasers, as per resolution of the board this day made; and be it further

Resolved by the board of directors of this company, That the Union Trust Company of New York be and is directed to
251 deliver the first-mortgage bonds of this company from No. 311 to number 600, both inclusive, to D. W. Balch or order, upon an order from the president of this company in favor of D. W. Balch or order and addressed to said Union Trust Company; that said D. W. Balch be and he is authorized, after the receipt of said bonds, to negotiate them in New York city or such other place as he may find sale for the same, and at such prices as he in his judgment may deem fitting and proper.

W. F. Berry tendered his resignation as president of the company and, upon motion, it was accepted by the company.

Mr. Fraser declining to serve as director, Mr. Balch was selected in his stead.

Mr. Manning nominated for president D. W. Balch and, his nomination being seconded by Geo. A. King, the vote was put, and he, receiving all the votes present, was declared duly elected president of the Nevada and Oregon Railroad Company.

Adjourned to meet again on Nov. 29th, 1882, at 2 o'clock p. m.

GEO. A. KING, *Sec'y.*"

252 Mr. Clarke next offered the proceedings of the board of directors of the Nevada and Oregon Railroad Company at their meeting January 19, 1883, contained in the Minute Book of N. — O. R. R. Co., pages 59, 60, 61, and 62.

Mr. Deal interposed the same objections to this offer as to the preceding offer of counsel for complainants.

The following is a true and correct copy of pages 59, 60, 61, and 62 of said Minute Book:

"RENO, *Jan'y* 19, 1883.

Adjourned meeting of the board.

The following-named directors being present, viz: D. W. Balch, A. H. Manning, R. L. Fulton, C. A. Bragg, Geo. A. King.

The following resolution was passed by the following votes, all the members present voting in the affirmative except A. H. Manning, who declined to vote:

Resolved, That it is the sense of the board of directors of the Nevada & Oregon Railroad Company that certain indebtedness due from Thomas Moore, late contractor with the company, to Manning & Berry, of Reno, Nevada, be assumed by the company; that
253 such indebtedness was made and incurred by said Thomas Moore with Manning & Berry on the faith of the company and, in fact, for the protection of the company; which indebtedness so assumed is as follows:

Balance due Manning & Berry on judgment obtained against Thomas Moore in 2d judicial district court of this State on the — day of ——, after deducting $3,000 for sale of locomotive Santa Cruz and fifteen flat cars, $11,963.70.

Judgment and costs paid by Manning & Berry in the suits of Phi. Bates against Thomas Moore, $832.73.

That the company assumes said demands as fully and to all intends and purposes as though said indebtedness had been originally contracted by the company with said Manning & Berry, and that the secretary of this company be directed to furnish Manning & Berry with a certified copy, under the seal of the company, of this resolution.

The following resolution was unanimously passed, to wit:

Resolved, That Manning & Berry be allowed the sum of $97.47 for fees and costs paid by them in the case of A. J. Hatch *vs.*
254 The Nevada & Oregon Railroad Company.

The following resolution was offered by Capt. Bragg and unanimously adopted:

Resolved, That Manning & Berry be allowed the sum of $840.15 for fees and costs paid by them in the case of A. J. Hatch *vs.* C. A. Bragg *et al.*

The following resolution was adopted by the following vote: Ayes—C. A. Bragg, R. L. Fulton, A. H. Manning. W. F. Berry here came in and voted aye.

Resolved, The indebtedness heretofore due Manning & Berry, Washoe Lumber Company, and D. W. Balch, and that is due H. J. McMurray, of San Francisco, W. Webster, W. E. F. Deal, and others be audited and paid in full by bonds of the company, and D. W. Balch, president of the company, in whose possession the bonds now are, be, and he is, directed to deliver to the treasurer of the company bonds sufficient for such purpose.

The following resolution was unanimously adopted, viz:

Resolved, That it is the sense of the board of directors of N. & O. R. R. Co. that the claim of C. A. Bragg & Co. against Thos.
255 Moore, late contractor with the company, be assumed by the company; that such indebtedness was made and incurred by Thos. Moore with C. A. Bragg & Co. on the faith of the company and, in fact, *and* for the protection of the company, which claim is for the sum of $1,975.55.

Resolved, That C. A. Bragg & Co. be allowed the sum of $1,103.16 for lumber furnished this company from July 28th, 1881, to Jan'y 1st, 1883.

Resolved, That the Nev. Mill & Lumber Co. be allowed the sum of $1,205.01 for ties and lumber furnished this Co. from Sept. 14th to Dec. 31, 1882.

Minutes read and approved.

Adj'd to meet on Tuesday, Jan'y 23d, at 1 o'c. p. m.

GEO. A. KING, *Sec'y.*"

Mr. Clarke next offered the minute book of the directors of the Nevada and Oregon Railroad Company, beginning on page 65 and ending after the word "secretary," on page 76, containing what purports to be the proceedings of the board of directors at a meeting January 26, 27, and 30, 1883, a copy to be substituted.

256 Mr. DEAL: To the introduction of this evidence all the defendants except the Nevada & Oregon Railroad Company object on the ground that the same is irrelevant, incompetent, and immaterial, and the Nevada & Oregon Railroad Company also objects separately upon the same grounds.

The following is a true and correct copy of the evidence last offered by Mr. Clarke:

"RENO, *Jan'y* 26, 1883.

Adjourned meeting of the board.

Present: D. W. Balch, A. H. Manning, R. L. Fulton, Geo. A. King.

Resolved, That it is the sense of this board of directors of the Nevada and Oregon Railroad Company that the indebtedness due from Thos. Moore, late contractor, to H. J. McMurray, of San Francisco, be assumed by this company; that such indebtedness was made for and incurred by the said Thomas Moore with H. J. McMurray on the faith of the company and, in fact, for the protection of the company and for its best interest; that the indebtedness so assumed is as follows: Amount of lien for iron furnished, filed Jan'y 4,
257 1882, $22,961.66; interest on cash advances and interest on iron purchases, $3,456.42; balance due from judgment obtained against Thomas Moore, $5,506.75; and the following amounts of money furnished by H. J. McMurray to this company at various times are hereby allowed: Cash advanced for engineers and taxes, $1,600.00; sheriff and law expenses, $728.60; expenses for telegraphing, travelling expenses, and freight on bonds, $358.10; cash ad-

vanced to H. R. Porter & Co., of Pittsburgh, Pa., for locomotive, $937.50; salary of agent of the company in San Francisco, $1,000.00; and these various items, amounting to the sum of $36,549.03, are hereby audited and allowed.

And be it further resolved, That it is the sense of the board of directors that the indebtedness due from Thos. Moore, late contractor, to the following-named parties of Reno & Virginia City, Nevada, namely: William Webster, attorney's fees in the case of Thos. Moore *vs.* Nevada & Oregon Railroad Company and E. D. Wheeler, fifteen hundred dollars; W. E. F. Deal, attorney's fees in the same case, one thousand dollars; A. J. Clark, supplies fur-
258 nished, $1,682.46; A. J. Clark, time checks, $2,000.

H. Rhue, meats furnished, $1,800.00.

D. Evans, meats furnished and teams, $1,440.

Hymers & Comstock, $469 for livery.

That the above-named indebtedness was made for and incurred by the said Thos. Moore with the above-named persons on the faith of the company and, in fact, for the benefit of this company and for its best interests, and that the above-named amounts are hereby audited and allowed.

Minutes read and approved.

Adjourned to meet on Saturday, Jan'y 27th, 1883, at two o'clock p. m.

GEO. A. KING, *Sec'y.*

RENO, *Jan'y* 27, 1883.

Adjourned meeting.

Present: W. F. Berry, D. W. Balch, R. L. Fulton.

No business coming before the board it adjourned to meet on Tuesday, Jan'y 30, 1883, at 2 o'clock p. m.

GEO. A. KING, *Sec'y.*

RENO, *Jan'y* 30, 1883.

Adjourned meeting of the 27th inst.

259 Present: C. A. Bragg, W. F. Berry, R. L. Fulton, D. W. Balch, Geo. A. King.

No business coming before the board it was ordered adjourned until Wednesday, Jan'y 31, 1883, at 10 o'clock a. m.

GEO. A. KING, *Sec'y.*

RENO, *Jan'y* 31*st*, 1883.

Adjourned meeting of the 30th inst.

Present: C. A. Bragg, W. F. Berry, A. H. Manning, D. W. Balch, Geo. A. King.

On motion of A. H. Manning, seconded by Mr. Bragg, the sum of eight hundred ninety seven & $\frac{54}{100}$, $897.54, be allowed A. Fraser for supplies furnished the company from June 25, 1882, to Dec. 31, 1882.

On motion of C. A. Bragg, seconded by Geo. A. King, the sum of sixteen hundred thirty-seven $\frac{5}{100}$, $1,637.05, be allowed Manning &

Berry for supplies furnished the Co. from June 1, 1881, to Dec. 31, 1882.

On motion of Mr. Manning, duly seconded by C. A. Bragg, the sum of $160 be allowed D. Evans for supplies furnished the company Sept. 7, 1882, to Jan'y 30, 1883.

On motion of W. F. Berry, duly seconded by A. H. Man-
260 ning, it was resolved that Geo. A. King be allowed to withdraw his stock subscription not yet due, amounting to five thousand dollars, $5,000.

On motion of C. A. Bragg, duly seconded by Geo. A. King, the sum of $2,400 *dollars* be allowed Messrs. Manning & Berry for use of the locomotive & fifteen flat cars from June 1, 1882, to Jan'y 31, 1883.

On motion of W. F. Berry, duly seconded by A. H. Manning, the sum of five thousand dollars be allowed W. Webster for services rendered as attorney for the company from the commencement thereof to the present date.

On motion of W. F. Berry, duly seconded by Geo. A. King, the sum of five thousand dollars be allowed to D. W. Balch for services rendered the company as its president, and for expenses of travelling to New York, and for cash expended for telegrams, &c., during the year ending Jan'y 31, 1883.

On motion of C. A. Bragg, duly seconded by W. F. Berry, the sum of —— dollars be allowed Geo. A. King for his services as secretary for the period *of* extending from Jan'y 3, 1882, to Jan'y 31, 1882.

261 On motion of Geo. A. King, duly seconded by C. A. Bragg, it was ordered that the sum of thirty-five hundred dollars be allowed W. E. F. Deal for services rendered the company as attorney to Jan'y 31, 1883.

On motion of C. A. Bragg, duly seconded by Geo. A. King, the sum of five thousand and fifty dollars be allowed Manning & Berry for a certain promissory note made and executed by them in the case of A. J. Hatch against The N. & O. R. Company.

On motion of C. A. Bragg, and duly seconded by W. F. Berry, it was ordered that the sum of thirty-two hundred and forty dollars for ties furnished the company in constructing of its road by Lonkey & Smith.

The following preamble and resolution *was* unanimously adopted:

Whereas D. W. Balch, the president of this company, has expended large sums of money in payment of his and other expenses attending upon his *injuries* while engaged in the business of the company; and

Whereas, in addition, that said president has made long and expensive journeys on business of the company and has laid
262 out considerable sums of his own money therefore; and

Whereas it is considered by this board that the sum of three thousand dollars will not more than cover the various sums thus so paid: it is therefore

Resolved, That, in addition to the sum allowed him as salary to this date, said D. W. Balch be allowed the sum of three thousand dollars.

On motion of W. F. Berry, and duly seconded by C. A. Bragg, it was ordered that Geo. A. King be allowed the sum of thirty-two hundred dollars for services rendered as secretary and for cash advanced the company.

On motion of W. F. Berry, and duly seconded by Geo. A. King, the sum of 350 dollars be allowed Clayton Belknap for services rendered as court commissioner in taking testimony in the case of Thos. Moore *vs.* N. — O. R. R. Co.

On motion of C. A. Bragg, and duly seconded by A. H. Manning, the sum of 343 dollars be allowed the Reno Gazette for printing and advertising.

The following resolution was unanimously adopted:

263 Be it resolved by the board of directors of the Nevada & Oregon Railroad Company, That certain indebtedness of the company be paid in the bonds of the company heretofore issued and secured by its first mortgage, as per resolution heretofore made and entered in the minutes of the company; that the indebtedness to be so paid is as follows, to wit: H. J. McMurray, in sum $36,549.03; H. J. McMurray, assignee of D. W. Balch, in the sum of 8,000.00; Washoe Mill & Lumber Co., assignee of C. A. Bragg & Co., 1,975.55; Washoe Mill & Lumber Co., assignee of C. A. Bragg & Co., 1,103.16; Jerry Schooling, assignee of Nevada Mill & Lumber Co., 1,205.01; First National Bank of Reno, assignee of Manning & Berry, 22,821.10; W. R. Chamberlain, assignee of Geo. A. King, 3,200.00; Lonkey & Smith, 3,240; Lonkey & Smith, assignee of Congdon & McIntosh, 224.79; W. E. F. Deal, in the sum of 4,500.00; W. Webster, in the sum of 6,500.00; David Evans, in the sum of 1,600.00; A. Fraser, in the sum of 897.54; Clayton Belknap, in the sum of 350.00; Reno Gazette, in the sum of 343.00;

264 Hymers & Comstock, in the sum of 469.00; and the president and treasurer of the company are hereby directed and required to deliver bonds to the said parties and to each of them in sums equivalent to the several sums above mentioned at eighty per cent. of the par value of said bonds, such sums being the several demands due from the company to said parties and that are to be paid in bonds upon each of said parties making and delivering to the company a receipt in full satisfaction of the several amounts above named, and, further, upon each of said parties signing an agreement that the bonds issued to him shall be delivered to Charles T. Bender, of Reno, Nevada, in trust for him, said bonds to remain in trust with said Charles T. Bender for the term of ninety days from the date of this resolution, said Bender executing his receipt for — thus delivered in trust as aforesaid. H. J. McMurray above named shall, nevertheless, be excepted from the provisions of this resolution, in that the bonds herein authorized to be issued

265 and delivered to said H. J. McMurray shall be by him received for said ninety days. Nevertheless, the parties receiving the bonds above mentioned may stipulate in the agreement above mentioned that the trust herein mentioned may be dissolved upon certain contingencies, to be mentioned in the agreement.

The following resolution was unanimously adopted:

Whereas A. H. Manning, W. F. Berry, D. W. Balch, and C. A. Bragg have heretofore made and executed two promissory notes of five thousand dollars each, being ten thousand dollars in all, said notes bearing ten per cent. per annum interest from the date thereof until paid; that said notes were executed in favor of A. J. Hatch for the purpose of settling certain indebtedness due from the Nevada and Oregon Railroad Company to said Hatch, said company being in an embarrassed condition at the time said notes were executed, and for which reason said company was unable to pay said Hatch said sum of money then being due to said Hatch from said company; and

266 Whereas said company has not at any time paid said notes or any part thereof, and said notes being still outstanding against said parties: Wherefore

Be it resolved, That the Nevada and Oregon Railroad Company does acknowledge said indebtedness to be legitimate indebtedness of the company and should in good faith be paid by the company as its indebtedness.

And be it further resolved, That in case said parties, Manning, Berry, Balch, and Bragg, should have to pay said notes or any part thereof *that* the company should of right repay the sum or sums paid by them, together with interest on said sums so paid, and in the event of payment by said parties of said notes or any part thereof the company, by its board of directors, acknowledges the company to be indebted to said parties in the sum or sums so paid by them on said notes.

Minutes read and approved.

Adjourned till Feb'y 3, 1883, at 2 o'clock p. m.

GEO. A. KING, *Sec'y.*

Here the further taking of evidence in said cause was adjourned till Sept. 22, 1883, at 10 o'clock a. m.

267 RENO, NEVADA, *Sept.* 22, 1883.

Counsel for the respective parties announced their readiness to proceed with the taking of evidence herein.

General Clarke being absent, S. D. King appeared in his stead for complainants.

D. W. BALCH, being first duly sworn by the examiner, on behalf of complainants, testified as follows:

Direct examination by Mr. KING:

Question. State your name, age, and place of residence, Mr. Balch.

Answer. D. W. Balch; residence, San Francisco, California; age, 47.

Q. Mr. Balch, did you know a corporation by the name and style of Nevada and Oregon Railroad Company?

A. Yes, sir; I did.

Q. Did you ever hold any official relation or position in that company?

A. I have acted as president of the corporation.

Q. State the period.

A. The record will show when I was first elected—October 11, 1881.

Q. To date?

A. With the exception of a few days.

268 Q. To date with the exception of a short period; what was the period of exception?

A. Well, I resigned October 21, 1882, and was re-elected November 20, 1882.

Q. You are now, then, the acting president of the corporation?

A. Yes, sir.

Q. Did you hold any other official relation to it during this time; were you trustee or director?

A. Yes, sir; I was one of the directors.

Q. During the same period you were a director—were you a director from October 20th, 1882, to November 20, 1882?

A. No.

Q. You were out of office entirely then?

A. Yes, sir.

Q. Do you know anything about the issuance of certain bonds by the company and a mortgage given to the Union Trust Company?

A. Yes, sir.

Q. Do you know the facts concerning the issuance of the bonds, 147 of them in number, over and above 310 theretofore issued?

A. Yes, sir.

Q. Do you know to whom those bonds were issued?

A. They were issued to various parties for money, supplies, and labor.

Q. That is, the 147 bonds in controversy?

269 A. Yes, sir.

Q. Can you name the parties to whom they were issued?

A. There was issued to H. J. McMurray 56 bonds in payment of $36,549.03, in payment for railroad iron, moneys advanced to Thomas Moore, contractor, and for payment of freight. (The bill on file here in the office specifies the whole thing if you want that.) Payment of freight, interest on advances, salary as agent of the company in San Francisco, financial agent, money advanced to engineers, cash advanced for initial payment of locomotive, and various other items that are specified in this bill; $22,961.66 of this money of the amount of $36,549.03 was in payment of a lien on Nevada and Oregon railroad held by Mr. McMurray, as I will explain hereafter.

Q. Then we take the next item of bonds, Mr. Balch?

A. The one is for H. J. McMurray, assignee of D. W. Balch, in the sum of $8,000. This is also included in the 56 bonds.

Mr. DEAL:

Q. When were those 56 bonds issued to McMurray; what was the date?

A. They were issued Feb. 2, 1883. This $8,000 was a bill that I held against the railroad company assigned to McMurray before the bonds was issued. It was for my salary and expenses incurred during my sickness caused by the shooting, traveling expenses, and money advanced for the company in telegraphing and various other ways.

Q. How many bonds were issued and in payment of what sum?

A. There was 10 issued on that.

Q. Ten bonds to pay $8,000?

A. They were all issued at 80 cents on the dollar. I delivered to Mr. McMurray for this first claim and assignment of mine 56 bonds. The ten bonds are included in the fifty-six. They were all issued on the same day. The 147 bonds in controversy were issued as follows: To H. J. McMurray, 56; to W. R. Chamberlain, 4; to First National Bank, as trustee for Manning & Berry, 28; to Lonkey & Smith, 4; to Catherine Winnie, 4; to Homer S. King, 1. (These last five bonds were originally issued to W. E. F. Deal and by him assigned to those parties before the commencement of this suit.) To
271 William Wright, 8. (Those 8 bonds were originally issued to Wm. Webster, and by him assigned to Wm. Wright before the commencement of this suit.) To A. Fraser, 1; to Charles T. Bender $437.50 of one bond, as trustee for Clayton Belknap; to Charles T. Bender $428.75 of one bond, as trustee of R. L. Fulton; to Charles T. Bender, 4; to Charles T. Bender, as trustee of W. E. F. Deal, to the extent of $625 of one bond; to Charles T. Bender, as trustee of Clayton Belknap, $428.75 of one bond; to Charles T. Bender, as trustee for Wm. Webster, $125 of one bond; to Charles T. Bender, as trustee of Lonkey & Smith, $330.80 of one bond; to Charles T. Bender, as trustee for Jerry Schooling, $354.65 of one bond; to Charles T. Bender, as trustee of Manning & Berry, $526.37 of one bond; to Charles T. Bender, as trustee of Hymers & Comstock, $586.25 of one bond; to A. A. Watkins, 13; to James F. Lewis, 2; to George H. Dana, 3; to William Wright, 5; to Robert H. Lindsay, as attorney for A. J. Clark, Mrs. Agnes McLellan, administratrix of the estate — H. G. McLellan, deceased, 7; to David Evans, 2; to Jerry Schooling, 5. Total, 147 bonds.

272 Q. Did you know H. J. McMurray, mentioned by you in your testimony?

A. Yes, sir.

Q. Did he hold any official relation to the Nevada & Oregon Railroad Company mentioned in the pleadings?

A. He was director of the company from the time when the great fight took place. He was elected on the 27th of September, 1881, as director and continued till the 16th day of May, 1882, when he resigned.

Q. Now, the several items which go to make up his demand against the railroad for which the 46 bonds were issued to him in his own right, were they by virtue of dealings between him and the company between the 27th of September, 1881, and May 16, 1882?

A. I find by reference to his bill on September 29th he has charged expenses here. When this iron was furnished I don't know.

It was furnished some time that fall; after his election. It was furnished to the contractor; it was furnished to Moore.

Q. So far as his dealings with the company were concerned, how many were between the 27th of September, 1881, and May 16th, 1882?

273 A. He has got a charge here of expenses to Reno September 29th, $65; on October 22d, $80, expenses to and in Reno; November 15, interest on $5,000 paid laborers; November 15–17, $127.75; November 21, 1881, cash paid for taxes, $600; interest on the same 13 months and 9 days, $66.50; telegrams to New York, $9.50. That telegram was to Moore, but it was expense incurred on behalf of the company. February 4, expenses to Reno, $41.25; February 17, expenses to Reno, $43; cash paid, sheriff's fees, $128.60; lawyers, $600.

Q. What is the date of that?

A. February 17, 1882, he has got it here, balance due from sale, $5,506.75; that was a balance Moore owed him, $9,000 or $10.000, money advanced by myself and him to Moore. He sued Moore and got judgment for the amount of $9,500, and he seized and sold a quantity of Mr. Moore's stock—2,720 shares—over 2,700 shares of stock belonging to Moore that stood in his name, and that stock sold for $4,000. He gave the judgment a credit of

274 $4,000, and the company assumed this balance of $5,506.75. That money was probably advanced while McMurray was a director.

Q. Advanced to Moore?

A. Advanced to Moore for the company. Interest on the same 10 months 11 days, $475.73; expenses to Reno, $43. That is all I find while he was a director; the balance was all after.

Q. How much of this $36,549.03 of the demand of McMurray against the company was for railroad iron?

A. For railroad iron? Well, I could not testify to that strictly. Mr. McMurray could; but I could testify that $22,961.66 was for railroad iron and freight on the iron.

Q. Who was the iron furnished to?

A. It was furnished to Thomas Moore, the contractor with the company, for the Nevada and Oregon Railroad Company.

Q. Against whom was the demand of McMurray for furnishing the iron and paying the freight thereon?

A. It was against Thomas Moore and the railroad company. Thomas Moore first and the railroad company second.

Q. Why do you say against the railroad company?

275 A. Because he had a right of lien against the railroad company if Moore did not pay him.

Q. How much money was advanced to Moore? Were any of these items money advanced to Moore?

A. Well, there was $5,000 advanced by Mr. McMurray to Mr. Moore.

Q. Of this amount of $36,549.03, $5,000 was for money advanced by McMurray to Moore? Then Moore owed McMurray for that $5,000?

A. Yes; then I assigned to McMurray a claim which I had against Moore for $4,500.

Q. Money advanced by you to Moore?

A. Yes, sir; and he sued Mr. Moore for this amount and he had judgment for $9,500.

Q. Did you advance your $4,500 at the instance and request of the company or at Moore's request?

A. Well, it was for the benefit of the company, at Moore's request.

Q. I don't ask you for whose benefit; I ask you at whose request did you advance it?

A. I advanced it at Mr. Moore's request.

Q. Did you take a note or anything of that kind to evidence it?

A. No, I did not. The money was advanced for this reason:
275¼ Mr. Moore claimed that he or the company owed $5,600 to Mr. Moran for interest on the bonds due. In December, 1881, I had made a stock subscription to the company; McMurray and myself had made a stock subscription of $10,000, on which there was $6,000 unpaid, but it was not yet due. Mr. Moore represented that it was very necessary to maintain his credit and the company's credit in New York by the payment of this interest, and requested me to pay this money in advance. I sent him a check or draft for $4,500, to be used in the payment of this interest on the 210 bonds.

Q. The 310 bonds?

A. The interest on 210 bonds issued to the Moran Brothers. They had not been all sold at that time. The understanding and the agreement was that Mr. Moore was to take the coupons; that he should take up and send them to me as collateral for this money advanced. The coupons was to be received by me and paid over to the treasurer on our stock subscription that was unpaid but not yet due. Instead of that Mr. Moore took this money that I sent
275½ him to pay the interest on these bonds and kept the coupons and sent me a receipt for $4,500 to be applied on his contract.

Q. In making the advance of $4,500 to Moore did you do it in the sense of making a payment on the stock subscription?

A. I did, to be used in that express way He paid the interest.

Q. Was it afterwards treated as a payment on your stock between you and the company?

A. No; when he done that I wrote him that he had not acted in good faith with me, and that I did not like it, and I withdrew from the subscription, and the company released me from the subscription, and I assigned this claim to McMurray and McMurray sued him.

Q. How much of the $36,549.03 was for salary as financial agent of the company?

A. $1,000.

Q. During what time did he act as financial agent of the company?

A. He put it down five months.

Q. Does he say when?

A. (Examining accounts:) Somewhere from June 5 to November 5, 1882, at $200 a month.

276 Q. "Money advanced to engineers"—how much?

A. $1,000.

Q. What engineers were they?

A. After the shooting took place here the company then was practically bankrupt. The engineers did not have any money at all, nor had they had any money for several months—the engineer corps in the field, on the road survey—and Mr. McMurray, at the solicitation of Mr. Fowler, Mr. Moore, and other parties, I don't know who, advanced this money to the company.

Q. Who was indebted to the engineers for their work at that time?

A. The company.

Q. Had their work been done for the company or Moore?

A. For the company. The company was to pay the engineers.

Q. Now, the next is for cash for initial payment on locomotive—how much?

A. $937½.

Q. Whose debt was that when paid by McMurray?

A. Well, last summer when we was building the road here the Pacific Bank, in San Francisco, told Mr. McMurray that they

277 would help us in the buying of the rolling stock, b-ying the locomotives—by us I mean the company—and Mr. McMurray ordered a locomotive for the company in the East. It was to have cost $9,375. They required 10% deposit before they would take the order. Mr. McMurray paid this money on this order—paid in advance—and subsequently the bank backed out. They would not furnish the money and we had no money to take up the locomotive when it was ready and it was forfeited.

Q. Any direct action taken by the company in ordering the locotive? Anything of that kind?

A. Nothing more than talk among the directors; no resolution.

Q. You say $22,961.66 was in payment of a lien on the railroad held by McMurray; do you wish to explain that in any way?

A. Well, that lien I have mentioned was placed on the road by McMurray some time—I don't know; I guess it was in January, 1882, and when I went to New York, in the winter of 1882,

278 Mr. Moran was very much exercised about the liens on the road and refused to do anything in the way of furnishing money to finish this section without these liens were released, and subsequently they sent me a letter of credit with power to draw on Moran Brothers, as every two miles was built, to the extent of $8,800 a mile—I have got the letter of credit here—provided the liens were released—that is, the labor liens. There was two classes of liens. But before the final draft could be drawn for the payment of 31-miles section- all liens against the Nevada and Oregon Railroad Company had to be released, and McMurray gave me a release releasing the right of lien, but not the claim against Thomas Moore or the railroad company.

Q. Had the lien of McMurray been released at the time of the issuance of these bonds?

A. Not on the record.
Q. Had it by McMurray to Moran?
A. Yes, sir; Moran had the release in his hand.
Q. After that release was executed had McMurray any de-
279 mand against the company?
A. He had a demand against the company, but not a lien.
Q. What demand did he have?
A. He had not been paid. The debt was still due.

(Recess.)

Q. You say that ten out of the 56 bonds issued to H. J. McMurray were issued on account of a claim and demand of yours against the railroad company, in the sum of $8,000, assigned by you to McMurray?
A. Yes, sir.
Q. What went to make up the $8,000, the amount of your claim, so assigned to McMurray?
A. Well, it was my time from about the first of August, 1881, until the 31st of January, 1882; my entire time; all my traveling expenses, with the exception of $200 which I received from the company. The expenses of my sickness—$5,000—was allowed by one resolution. I complained that that did not near pay my expenses.
Q. Did you present any bill or account showing what the $5,000 was claimed for?
280 A. Yes, sir.
Q. State what it was claimed for.
A. The bill shows. It is as follows:

"Nevada and Oregon Railroad Company to D. W. Balch, Dr.

To amount due for salary, traveling expenses, telegrams, and other expenses from Sept. 27th, 1882, to Jan'y 31, 1883, $5,000.

For value received I hereby assign and set over to H. J. McMurray, of San Francisco, Cal., the above and foregoing account and claim.
Reno, Nevada, Jan'y 31, 1883.

D. W. BALCH.

$5,000. JANUARY 31, 1883.

Received from Nevada and Oregon Railroad Company five thousand dollars in full for above account.

H. J. McMURRAY, *Assignee.*"

Q. The first item is salary. What salary were you drawing?
A. There was no stated salary ever named.
Q. How much of the $5,000 was considered for salary?
A. I don't know as any special amount was considered.
281 Q. Do you recollect how much of the $5,000 was for traveling expenses?
A. Well, there was my expenses going to New York and

returning, all my traveling during the time I was there, and cost of telegrams.

Q. That you have got independently—telegrams?

A. Well, I presume $700 would not cover the traveling expenses alone.

Q. Do you know how much went in the way of telegrams of this $5,000?

A. Oh, I don't know.

Q. You are unable to state?

A. I am unable to state.

Q. What do you mean by "other expenses" here?

A. Well, the other expenses—let me see the bill. I did not make this bill out. Well, I will tell you what the other expenses are. The other expenses were included in removing these liens that were here; at one time we had 88 liens filed against this railroad. Nearly every one of them was of men that had to be interviewed probably from one to fifty times, and they had to be treated with liquor, they had to be gone over. That money, probably, that I spent in that way would have amounted to—well, $100.

Q. That is what you mean by "other expenses?"

A. Yes, sir; I cannot tell how much it would be.

282 Q. For what office or position did you claim that salary?

A. Being president and manager.

Q. President and manager?

A. Yes, sir.

Q. Was any of this amount included in any business or about any business of Thomas Moore—any of these expenses and outlays?

A. I never attended to Thomas Moore's business at all.

Q. Not in any respect?

A. No.

Q. Were you present at the meeting when this order was allowed?

A. No, sir; I was not, not when that was voted on. I left the room. I had been present at the meeting, but left the room during the action of the board upon this bill. When I came back and found that they had allowed $5,000, I told them that it was not treating me right; that, taking my traveling expenses and telegrams, costs of shooting, doctors' bills, and one thing — another, some of which are not paid to-day, they did not allow me anything for my services and time, which had been given undivided to the railroad. I had not attended to any other business. Then

283 $3,000 of the $8,000 was allowed by another independent resolution on the same day.

Q. How much of the $3,000 was for money expended in payment of medical services or payment of physician?

A. There is $450 that I paid and $230 that I owe yet. The pay of the nurses while I was sick here and the pay of the druggist's bill and incidentals amounted to all of $300.

Q. Is that included in the $3,000 claim?

A. Yes, sir; it is included in the whole amount of $8,000.

Q. What was the occasion of your being shot or how were you shot—under what circumstances?

A. I was shot in upholding what I considered the rights of the company.

Q. Were not you shot in an affray in which T. Coffin, S. C. Scoville, and James McMeacham were participants?

A. Yes, sir.

Q. In what respect did that concern the interest or business of the Nevada and Oregon Railroad Company?

A. Well, Mr. Coffin, Sunderland, Wheeler, McMeacham had voted themselves 50,000 shares of stock, for which they had paid
284 nothing, and they attempted to vote it against, I think it was, 5,271 shares of full-paid-up stock.

Q. That was the occasion of the affray?

A. That was the occasion of the affray.

Q. The company did not owe the physician or the nurses or the druggist anything, did they?

A. The company did not employ them. The company assumed the obligation.

Q. They did not assume the obligation; they assumed to reimburse you?

A. Yes, sir.

Q. When were these accounts assigned by you to H. J. McMurray?

A. They were assigned before they were allowed.

Q. Can you say how many days?

A. On the same day.

Q. Did McMurray act as one of the board of directors in allowing the accounts?

A. No, sir.

Q. Was he a director at the time?

A. No, sir.

Q. Did they allow you for anything in the way of pain or suffering—anything for being shot? Was that one of the elements?

A. Not stated so in the resolution. The resolution reads: "Whereas D. W. Balch, the president of this company, has
285 expended large sums of money in payment of his and other expenses attending upon his injuries while engaged in the business of the company; and whereas, in addition, that said president has made long and expensive journeys on business of the company and has laid out considerable sums of his own money therefor; and whereas it is considered by this board that the sum of three thousand dollars will not more than cover the various sums thus so paid: It is therefore resolved, That in addition to the sum allowed him as salary to this date said D. W. Balch be allowed the sum of three thousand dollars."

Q. Do you know what the demand of W. R. Chamberlain against the company was for which four bonds were issued to him?

A. Well, that was for salary to Mr. King. He was secretary and he assigned to Chamberlain.

Q. On what account was the 28 bonds issued to the First National Bank of Reno, as trustees for Manning & Berry?

A. That was issued for supplies furnished by Manning and Berry to Thomas Moore, the contractor to the Nevada and Oregon

286 Railroad Company. Thomas Moore's debts was assumed by the railroad company. This bill shows what it was for (showing).

Q. Do you mean to say that any part was for supplies furnished by Manning & Berry to the company, or all to Moore?

A. Yes, sir; part of it was.

Q. Well, then, just state how much.

A. That bill of $1,627.05 was furnished to the company.

"RENO, NEV., *Dec.* 30, 1882.

Nev. & Oregon R. R. Co. bought of Manning & Berry, successors to Manning & Duck, dealers in groceries, provisions, liquors, stoves, hardware, and agricultural implements; agents for the California Powder Works and Standard Oil Company of Cleveland, Ohio.

To bal. ac. rend..... 1,637.05

For value received, we assign the above and foregoing account to the First National Bank of Reno, Nevada, together with all right, title, and interest therein.

Feb'y 25, 1883.

A. H. MANNING.
W. F. BERRY.

RENO, NEV., *Feb.* 10, 1883.

Received from Nevada and Oregon Railroad Company sixteen hundred & thirty-seven $\frac{05}{100}$ dollars.

C. T. BENDER, *Ca'h'r.*"

287 This bill of $5,050 was an obligation of the company assumed by Manning & Berry in the shape of a bond on which they were sued, judgment recovered against them, and they had to pay it and they paid it.

Q. State what kind of an obligation it was.

A. It *it* the old Hatch matter, the Hatch judgment against this company. Mr. Hatch sued the company for the sum of $12,000 or over, attached the locomotive and some effects of Thomas Moore. Mr. Moore came to Manning & Berry and asked them to go on the bond to release the attachment, which they did in connection with Capt. Bragg. The bond was for $15,000. Subsequently Mr. Hatch recovered judgment against the company and attached Manning & Berry's store on this bond, and the store was released from attachment by their giving bond, and they reopened the case. The case was reopened, and subsequently Manning & Berry was beat on this bond. There was a judgment against the railroad company and afterward a suit against Manning & Berry. The thing was settled by Manning & Berry and Bragg and myself giving 3 notes on 3, 6, and 9 months. Through this debt of the company we had
288 to do it. This note was the first note that was paid by Manning & Berry:

"$5,000.00. RENO, NEV., *May* 27, 1882.

On or before September 1st, 1882, without grace, for value received, we, jointly and severally, promise to pay to the order of A. J. Hatch five thousand ($5,000) dollars in U. S. gold coin, at the Anglo-California Bank of San Francisco, with interest at the rate of ten per cent. per annum from date until paid.

A. H. MANNING.
W. F. BERRY.
C. A. BRAGG.
D. W. BALCH."

(Endorsed:) $130 interest paid by D. W. Balch, to Sept. 1, 1882. A. J. Hatch.

Manning & Berry rendered the following bill to the company on account of this matter:

"Nevada & Oregon Railroad Company to Manning & Berry, Dr.

—— —, 1883.

To cash paid on judgment of A. J. Hatch against the N.—O. R. R. Co., as per note	5,000
Interest on same 30 days	50
	$5,050

For value received, we assign the above claim to the First National Bank of Reno, Nevada, together with all right, title, and interest thereto.

Jan'y 25th, 1883.

A. H. MANNING.
W. F. BERRY.

(Endorsed:) Reno, Nev., Feb'y 10th, 1883. Received from
289 Nevada & Oregon R. R. Co. five thousand & fifty dollars, in full for above account. C. T. Bender, cash'r 1st Nat. Bank of Reno, Nev."

The company voted Manning & Berry bonds to pay them.

Another bill was $2,400 for rent of rolling stock from June 1st, 1882, to Feb. 1st, 1883, rented by Manning & Berry to the Nevada & Oregon railroad. This rolling stock was a locomotive and 15 flat cars that was at that time claimed by Thomas Moore as his individual property when he left the State and was sued by Manning & Berry. These cars were attached, sold under the execution of the court, and bid in by Manning & Berry and rented by them to the company. The bill is as follows:

"Nevada and Oregon Railroad Company to Manning & Berry, Dr.

—— —, 1883.

To lease of rolling stock for 8 months, from June 1, 1882, to February 1, 1883	2,400

For value received, we assign and set over to the First National Bank of Reno, Nevada, the above and foregoing account and claim.
Dated this Jan'y 25, 1883.

A. H. MANNING.
W. F. BERRY.

290 (Endorsed:) Reno, Nev., Feb'y 10, 1883. Received from Nevada and Oregon Railroad Company twenty-four hun. dollars, in full for above account. C. T. Bender, ca'h'r 1st Nat. Bank — Reno."

Q. This is for rolling stock leased by Manning & Berry to the company. Was that a written lease or verbal?
A. Written lease.
Q. Have you got it here?
A. No.
Q. Is this date correct—June 1st, 1882, to February 1st, 1883?
A. Yes, sir; the lease was for $300 a month.

(Witness here produced another bill which read as follows:)

"RENO, NEV., *Jan'y 1st*, 1883.

Nevada & Oregon R. R. Co. bought of Manning & Berry, successors to, &c.

A. J. HATCH *vs.* N. & O. R. R. Co.

1882.		
June 1.	To costs paid in the above suit	91 10
'83.		
Jan'y 1.	To int. on costs, 1%	6 37
		97 47

A. J. HATCH *vs.* C. A. BRAGG *et al.*

'82.		
Jan'y 1.	To costs paid on above suit	303 79
	" attorneys' fees	500 00
	" int. on costs, 303.79, 1%	36 36
		840 15

PHI. BATES *v.* THOS. MOORE.

1882.		
291 Ap'l 13.	To amount judgment	736 00
	Costs paid	41 65
1883.		
Jan'y 1.	To int. from April 3, '82, to Jan'y 1, '83, 1%	55 08
		832 73
		$1,770 35

For value received, we assign and set over the above and foregoing bill to the First National Bank of Reno, Nevada.
Jan'y 25, 1883.

A. H. MANNING.
W. F. BERRY.

(Endorsed:) Reno, Nev., Feb. 10, 1883. Received from Nevada and Oregon Railroad Company seventeen hundred & seventy $\frac{35}{100}$ dollars, in full for above account. C. T. Bender, cash'r 1st Nat. Bank of Reno."

This bill was presented to the company and allowed.

Q. Take this last bill of $1,770.35. What is the meaning of the item $500 attorneys' fee?
A. I don't know. That is just as the bill came in. An item of $500 is included in that bill; that was for attorneys' fees paid for defending themselves and the company in this suit upon the bond given by Bragg & Co., Bragg and Manning & Berry to Hatch—the bond to release the attachment.
Q. Do you know who hired the attorneys?
292 A. I do not know.
Q. Who paid the attorneys. Do you know that?
A. They told me they did—Manning & Berry did. They were held for them. I don't know whether they paid it or not.
Q. Is there any other bills that go to make up the $22,821.10?
A. Here is this bill:

"RENO, NEV., *Jan'y* 1, 1883.

M. & B. *vs.* THOS. MOORE.

Bought of Manning & Berry, successors, &c.

1882.				
Feb.	4.	To am't judgment		13,054 23
		Am't int. due on ac.		417 94
				13,472 17
M'ch	4.	To int. on 13,054.23, 10%		108 78
				13,580 95
"	"	By sale locomotives		3,000 00
				10,580 95
Aug.	1.	To int. 10,472.17, 10%		436 34
		" " costs p'd Feb'y & M'ch, '82	460 10	
		" int., 1%	26 97	
				488 07
'83.				
Jan'y	1.	" " on 10,472.17, 10%		436 34
"	"	" " " 460.10, costs to date, 1%		23 00
				$11,963 70

(Endorsed:) For value received, we assign and set over to the First National Bank of Reno, Nevada, the above and foregoing account and claim. Jan'y 23, 1883. A. H. Manning, W. F. Berry.

293 RENO, NEV., *Feb.* 10, 1883.

Received from Nevada and Oregon Railroad Company eleven thousand nine hundred & sixty-three $\frac{70}{100}$ dollars, in full for above account.

C. T. BENDER,
Cash'r 1st Nat. Bank of Reno."

I have no personal knowledge of any other accounts going to make up the 22,821.10.

Q. Do you know who composed Manning & Berry at that time?

A. The firm was A. H. Manning and W. F. Berry, I suppose.

Q. Was either of those gentlemen an officer of the corporation?

A. Yes; they were trustees.

Q. Both of them?

A. Yes, sir; not all the time.

Q. State the period during which each one was a trustee.

A. Mr. Manning was director from September 27, 1881, until the present time—up to date.

Q. Does that period embrace the time when all these outlays were incurred and supplies furnished?

A. No, sir; I don't think it does. Mr. Manning could testify to that better than I can.

294 Q. Does it embrace the period when they say they paid the $5,000?

A. Yes, sir.

Q. Do you know whether it embraced the period when the account of $1,637.05 accrued?

A. I presume it did; part of it, anyhow. I cannot testify certain; I have not the books here.

Q. State when Mr. Berry was an officer of the company—Nevada and Oregon Railroad Company.

A. Berry was elected on the 7th day of June, 1882, and has held the office up to date.

Q. Been so ever since?

A. Yes, sir; up to date.

Q. Were they actively engaged in attending to the business and duties of their office, participating in the meetings, &c.?

A. They were present at some of the meetings; some they were not.

Q. Do you know on what account the four bonds issued to Lonkey & Smith were issued?

A. Well, they were issued for ties and bridge timbers and interest.

Q. Ties and timbers furnished—whom to?

295 A. Well, at first these ties and timbers were furnished to Thomas Moore. They were hauled to the end of the track some time during the fall of 1881, and were seized under execution and sold—bid in by the parties who attached them, Manning &

Berry—and made over to Capt. Bragg, who owed Lonkey & Smith a large amount of money, and he sold the ties to Lonkey & Smith. Subsequently, on my return from the East and when we commenced to lay the last 14 miles of track, Lonkey & Smith would not let those ties be placed down on the road or the bridge timbers used in the construction of bridges without they had a written agreement with the company. I made such an agreement, which is on record here, and I paid them some $2,000 on that agreement, and this was the balance due on that agreement made by the president with them under authority from the board of trustees.

Q. Against whom was the execution under which they were sold originally?

A. Against Moore.

Q. To whom were the four bonds designated in the pleadings as the Winnie bonds issued?

A. I don't know who they were issued to.

296 Q. Do you know anything about the Homer King bond?

A. I don't know.

Q. Do you know anything about the William Wright bonds?

A. No, sir.

Q. Do you know anything about the one bond issued to Mr. A. Fraser?

A. No, sir. I know I sent 61 bonds to the treasurer. I don't know of my own knowledge that any bond was paid—issued to Fraser at that time.

Q. Do you know anything about the four bonds issued to Bender as trustee for several different parties?

A. I know there is an agreement on the record that certain bonds should go into Bender's hands under certain contingencies.

Q. Do you know the nature of the indebtedness held by the parties against the company for which the bonds were issued to Bender?

A. Yes, sir; I know the nature of the indebtedness.

Q. What was the nature of the indebtedness of Fulton against the company?

A. That was in the nature of a bill held by him against Thomas Moore and assumed by the company and a bill against the

297 company direct for printing.

Q. How much of it was a bill against Thomas Moore, if you recollect?

A. Maybe the record shows here. Well, the record don't show. It merely says $343 be allowed to Reno Gazette for printing advertisement.

Q. Do you know the character of the claim of W. E. F. Deal against the company, the $625?

A. I do not know that.

Q. Do you know the nature of the demand of Mr. Webster against the company that is included in these four bonds?

A. No, sir.

Q. Do you know the demand of Lonkey & Smith against the company that is included in the bond for which Bender is trustee to the amount $330.80?

A. No; I don't know anything about the fractions.

Q. Jerry Schooling, Clayton Belknap, Hymers & Comstock, Manning & Berry—these fractions?

A. No, sir.

Q. Do you know what the 13 bonds issued to A. A. Watkins were for?

A. They were issued to him, as the assignee of Manning &
298 Berry, for money that Manning & Berry had paid out on this balance—this Hatch matter, the same $10,000. Manning & Berry had failed and they made an assignment to Watkins, and these bonds were issued to him.

Q. Do you know what the two bonds issued to J. F. Lewis were issued for?

A. They were issued to Mr. Deal for legal services.

Q. Do you know what services they were?

A. Services in defending the company in these suits that are now pending — the action of the company in the suits that are now pending.

Q. Can you testify what services they were?

A. Pages 80, 81, and 84 of the Minute Book of the company show (reading):

"RENO, *April 25th*, 1883—2 o'clock p. m.

This being the day and hour to which the board had adjourned, and A. H. Manning, C. A. Bragg, W. F. Berry and R. L. Fulton being present, and the president and vice-president being absent, and it being necessary that certain business of the company be at this meeting transacted, on motion of R. L. Fulton and seconded by C. A. Bragg, A. H. Manning was elected president *pro tem.*
299 and C. A. Bragg was chosen sec'y *pro tem.*

Meeting having been called to order by the president *pro tem.*, on motion of R. L. Fulton and upon the second of W. F. Berry, the following resolution was adopted, to wit:

Be it resolved, That W. Webster and W. E. F. Deal be and they are employed by the company, for the term of one year from this date, as the attorneys of the company; that their retainer and employment by the company is made especially with reference to litigation by the Union Trust Company of New York, mortgagee in trust of the company's railroad, and certain litigation by Moran Brothers, of New York, who are holders of the company's bonds, said litigation now being pending in the U. S. circuit court for the district of Nevada; but, nevertheless, said retainer and employment, especially that *there* employment is in relation to all matters wherein the company may become parties pending said term, and in consideration of said retainer and employment the president and treasurer of the company are directed to deliver to the said Webster and
300 said Deal ten one-thousand-dollar bonds of the first-mortgage bonds of the company, or to such person or persons as they may direct to receive the same, said bonds to be in full satisfaction of their said retainer and services for said term.

RENO, *May* 5, 1883.

Adjourned meeting.

Present: D. W. Balch, C. A. Bragg, A. H. Manning, R. L. Fulton, and Geo. A. King. * * *

On motion, the following resolution was unanimously adopted, to wit:

Whereas a resolution of the board of directors of the company is not entirely satisfactory to all of the individual members of the board of directors, in that it is not sufficiently specific whereby W. E. F. —— and W. Webster are retained as attorneys for the company in regard to certain litigation now pending in the U. S. circuit court for the district of Nevada, together with all other business, said resolution having been passed by the board April 25th, 1883:

Now, be it resolved, That, the said Deal and Webster consenting thereto, *that* said retainer and employment shall be deemed
301 to extend to the close of the suits now pending in the U. S. circuit court and to all other business for the term of one year from the date of said resolution of April 25, 1883."

Q. Do you know the three bonds issued to George H. Dana?

A. It was for the same object.

Q. They were issued on the same consideration as the two issued to Lewis?

A. Yes, sir.

Q. The five issued to William Wright, do you know on what account they were issued?

A. Legal services of Mr. Webster.

Q. Do you know what those services consisted of?

A. Defending the company under the resolutions on pages 80, 81, and 84, above set forth.

Q. Do you know the nature of the indebtedness for which the seven bonds were issued to R. H. Lindsay?

A. That was for satisfaction of a judgment held by Mrs. Agnes McLellan, administratrix of the estate of H. J. McLellan, who was the chief civil engineer for the company—laid out the road—in satisfaction of a claim that she held, or a judgment.

Q. Against whom?

A. Against the Nevada and Oregon railroad. Mr. A. J. Clark commenced a suit against myself, Manning & Berry, McMur-
302 ray for debts that Mr. Moore owed, and these debts had been contracted by Mr. Moore while he was here. The articles he bought of Mr. Clark had all gone into the railroad. The debts were assumed by the corporation and I was authorized to pay them and settle the thing with the bonds of the company, which I did.

Q. Do you know anything about the consideration of the two bonds issued to David Evans?

A. David Evans' bonds—his bill was $1,600; $1,440.00 of the same was for teams furnished Thomas Moore. The balance was mostly for beef furnished during the same period. That all went into the construction of the road, and the debt was assumed by the company and paid in bonds, and, in addition to that, there was a

bill of $160 allowed Mr. Evans for board of men working on the road and beef furnished the Nevada and Oregon Railroad Company during the time that I had charge of affairs. Here are Mr. Evans' bills:

ONEIDA, *Dec.* 21, 1882.

"N. — O. R. R., Dr. to D. Evans for 25 days' board, $21.50.

ONEIDA, *Dec.* 21, 1882.

303 J. H. Reaga, Dr. to D. Evans for fifteen days' board, $13.00.

ONEIDA, CAL., *Nov.* 13*th*, 1882.

N. & O. R. R. Co. in ac. with D. Evans.

Oct.	19.	To bill rendered	126 80
"	23.	" 212 lbs. tallow	12 72
"	24.	126 " beef @ 10c.	12 60
"	26.	125 " " "	12 50
"	29.	125 " " "	12 50
			$177 12

ONEIDA, CAL., *Oct.* 19, 1882.

N. & O. R. R. Co. in ac. with D. Evans.

Sept.	7.	110 lb beef @ 10c.	11 00
"	8.	140 " "	14 00
"	10.	130 " "	13 00
"	13.	120 " "	12 00
"	17.	205 " "	20 50
"	19.	105 " "	10 50
"	20.	135 " "	13 50
"		Hay and grain	1 50
"	23.	120 lb beef @ 10c.	12 00
"	26.	100 " "	10 00
"	28.	100 " "	10 00
"	30.	140 " "	14 00
Oct.	3.	128 " "	12 80
"	6.	135 " "	13 50
"	9.	45 mutton @ 10c.	4 50
"	13.	120 beef "	12 00
"	16.	80 mutton "	8 00
"	17.	Horseshoeing	2 50
"	"	Repairing car	2 50
"	"	Sharpening chisels	1 00
"	19.	150 lb beef @ 10c.	15 00
			226 80

304	By cash from D. J. Sullivan	100	00
	Am't due Oct. 19, '82	126	80
		50	32
		13	
		21	50
		211	62
	Cr. cash, .10. Freight, .41	51	
		160	62

Nevada and Oregon Railroad Company to D. Evans, Dr.

1883. To teams furnished Thomas Moore, late contractor for the Nevada & Oregon railroad, during the year 1882, and for beef furnished during the same period to the said Thomas Moore 1,440 00

Q. What was the nature of the demand for which 5 bonds were issued to Jerry Schooling?

A. $1,205; those five bonds that were issued were for ties furnished the corporation last fall, 1882, by the Nevad- Mill and Lumber Company and assigned by them to Jerry Schooling. He was the manager of it, I guess.

Q. What was the balance for?

A. Capt. Bragg can tell about those 2 bills better than I can.

Q. Do you know whether the balance was for a demand against the corporation or Moore?

A. Part of that was against the corporation and part
305 against Moore, on account of indebtedness that the company assumed for Moore.

Q. You say that the corporation assumed certain debts of Thomas Moore?

A. Yes, sir.

Q. At that time did the corporation owe Moore anything?

A. He claimed they did.

Q. Did the company concede it?

A. I believe they did.

Q. Did the company and the several claimants against Moore have any agreement together by which the debts of Moore were assumed?

A. No; never got together as a company and done it. I went to New York and made a settlement with him and agreed to pay the debts; agreed that the company should pay the debts. The board of directors passed resolutions in regard to it, found on pages 29 and 59 of the Minute Book of the company:

"Board met pursuant to adjournment, the following directors present—Balch, Bragg, Fulton, Manning.

On motion — Mr. Bragg the following resolution (was) adopted:

Be it resolved, That the company do isshue certificate of in-
debtedness for the purpose of redeeming the outstanding
306 labor time checks of Thomas Moore, late contractor of the

Nevada and Oregon R. R. Co.; also for labor for said Co. for the purpose of placing the indebtedness of the Co. in proper form, said certificate to be in form as follows:

"No. —. $—."

Office of Nevada and Oregon Railroad Company.

Certificate of Indebtedness for Labor.

RENO, NEVADA, —— —, 1882.

This certifies that the "Nevada and Oregon Railroad Company" is indebted to —— ——, or order, for the sum of ——$_{100}$ dollars for labor performed on said railroad under the contract of Thomas Moore, and that the same will be paid under the following conditions: Ten days after the completion of the twenty-fifth mile of track of said road north of Reno, we will pay at this office 15 per cent. of the face value of this certificate to the holder of the same. Ten days after the completion of the thirtieth mile of track, 10 per cent. more on the face value of this certificate. Ten days after completion of the thirty-fifth mile of track north of Reno, 15 per cent. more on the face value, and on completion of each additional five
307 miles of track north of Reno we will pay 10 per cent. more of the said face value until the said certificate is redeemed by this company. This certificate will be received by the treasurer of the company in payment for subscriptions to the capital stock of the company, provided it is redeemed in one payment or in payment of freights due the railroad company, as follows: Ten per cent. of the face value of any one freight bill, provided that not to exceed 20 per cent. of the face value of this certificate shall be indorsed on the same in any one calendar month, or in payment for five-hundred-mile tickets which shall not be transferrable, or if paid half in cash and half in certificates the same to be made transferrable. All payments on this certificate to be indorsed on the same.

By order of the board of directors of Nevada and Oregon Railroad Company.

—— ——, *President.*

—— ——, *Secretary.*

RENO, *Jan'y* 19, 1883.

Adjourned meeting of the board, the following-named directors being present, viz: D. W. Balch, A. H. Manning, R. L. Ful-
308 ton, C. A. Bragg, Geo. A. King. The following resolution was passed by the following votes, all the members present voting in the affirmative except A. H. Manning, who declined to vote:

Resolved, That it is the sense of the board of directors of the Nevada & Oregon Railroad Company that certain indebtedness due from Thomas Moore, late contractor with the company, to Manning, & Barry, of Reno, Nevada, be assumed by the company; that such indebtedness was made and incurred by said Thomas Moore with Manning & Berry on the faith of the company and, in fact, for the

protection of the company, which indebtedness so assumed is as follows: Balance due Manning & Berry on judgment obtained against Thomas Moore in the 2d judicial district court of this State on the — day of ——, after deducting $3,000 for sale of locomotive Santa Cruz and fifteen flat cars, $11,963.30; judgment and costs paid by Manning & Berry in the suits of Phi. Bates against Thomas Moore, $832.73. That the company assumes said demands as fully and to all intents and purposes as though said indebtedness had been originally
309 contracted by the company with said Manning & Berry, and that the secretary of this company be directed to furnish Manning & Berry with a certified copy, under the seal of the company, of this resolution. * * *

Resolved, The indebtedness heretofore due Manning & Berry, Washoe Lumber Company, and D. W. Baleh, and that is due H. J. McMurray, of San Francisco, W. Webster, W. E. F. Deal, and others, be audited and paid in full by bonds of the company; and D. W. Balch, president of the company, in whose possession the bonds now are, be, and he is, directed to deliver to the treasurer of the company bonds sufficient for such purpose.

Q. Do you know anything about the existence of a contract between Thomas Moore, the contractor with the Nevada and Oregon Railroad Company, and the company, by which not to exceed $10,000 first-mortgage bonds per mile should be issued by the company?

A. There was such an agreement entered into in New York between Moore and the corporation.

Q. Do you know where that contract is?

A. The original, I suppose, is in New York.

310 Q. You do not know where the original is, but suppose it is in New York?

A. Yes, sir.

Q. Have you a copy of it?

A. Yes, sir.

Q. With you?

A. Yes, sir.

Q. Did Manning & Berry and the other creditors of Thomas Moore know of the existence of that contract between Moore and the company, made in New York?

A. To a certain extent they did.

Q. To what extent did Manning & Berry know?

A. To the extent of a telegram I sent them; that was all. A great many things were never known by them and never agreed to.

Q. What was communicated by the telegram?

A. This is what they acted on, this telegram to McMurray.

Mr. DEAL: All the defendants except H. J. McMurray object to the question and the testimony sought to be elicited, on the ground that it is irrelevant, incompetent, and immaterial as to them; that it does not show or tend to show any notice to anybody except Mr. McMurray; and Mr. McMurray objects on the ground that it is not

shown that he ever received any such telegram, and as to
311 him we will move to strike it out unless it is shown that he received——

By Mr. KING:

Q. Have you that telegram?

A. I have not. (Reads copy:)

"NEW YORK, *Feb'y* 27, 1882.

"To H. J. McMurray, 312 California:.

I offer 10,300 shares. Moore assigns contract and Moran's paper. Company assume all debts; you surrender draft and order for stock; transfer back 145 shares, purchase at sale. Manning surrenders Moore and Fowler notes. Moore wants 5,000 of Moran paper for debts here. Agreement subject to yours and Manning's approval. Write Manning. Can you get rails?

"D. W. BALCH.

"Sent Feb'y 27."

They had no other notice than this telegram.

Q. Do you know whether McMurray got that telegram by any conversation you have had with him?

A. I presume he received it. I got an answer to it from him, as follows:

MR. DEAL: All the defendants except McMurray object to the introduction of the answer to the telegram on the ground that the same is irrelevant, immaterial, and incompetent, and does not show or tend to show any notice to them.

A. (Reading:)

312 "Received at the Western Union building, 195 Broadway, New York, March 3, 1882; dated San Francisco.

"To D. W. Balch, care Moran Bros., 68 William St., N. Y., care Dauler, N. Y.:

"Manning and myself accept settlement as per telegram. Issue Moore stock as road is completed. Better assign contract to me. If Manning is paid, can get rails. Answer if arranged.

"H. J. McMURRAY."

Q. Can you fix the day of the contract by reference to this telegram?

A. The date of the contract was March 25th. The agreement which these despatches have reference to bears date March 25, 1882. It was not ratified till 2 days after it was agreed.

Q. Do you know whether Manning & Berry, or either of them, had any knowledge of the contents of that contract at the time of the issuance of the bonds to the National Bank as trustee for them, and also the issuance of the bonds to Watkins?

A. Well, I don't know as they ever read it. They had seen it.

Q. At that time, Mr. Balch?

A. Yes, sir.

Q. Do you know any other person to whom these bonds
313 were issued that had seen that contract to whom bonds were issued?

A. No, sir; only Judge Webster, Mr. Deal, and Mr. McMurray.

Q. Do I understand you to say Manning & Berry, Judge Webster, Deal, and H. J. McMurray had seen the contract at and before the time these bonds were issued that were issued upon their account?

A. Yes, sir; they are the only ones that I remember that had seen it. Some parties might have seen it on the record.

Q. That contract is of record?

A. I understood it was; I never have seen it.

Q. You did not put it on record?

A. No, sir.

End of direct examination.

Cross-examination of D. W. BALCH by Mr. DEAL:

Q. Mr. Balch, you have the minutes of the board of trustees before you of defendant, The Nevada and Oregon Railroad Company?

A. Yes, sir.

Defendants here offered in evidence the following, from p. 29 of said Minute Book.

(Counsel for complainants objected to the evidence on the
314 ground that it was not cross-examination.)

"Board met pursuant to adjournment.

"The following directors present: Balch, Bragg, Fulton, Manning.

"On motion of Mr. Bragg, the following resolution adopted:

"Be it resolved, That the company do isshue certificate of indebtedness for the purpose of redeeming the outstanding labor time checks of Thos. Moore, late contractor of the Nevada and Oregon R. R. Co.; also for labor for said Co. for the purpose of placing the indebtedness of the Co. in propper form; said certificate to be in due form as follows. (See *ante*, p. —.)"

Q. At what time did Thomas Moore leave here?

A. He left here about the 16th of November, 1881.

Q. Did he return afterwards?

A. No, sir.

Q. In what condition did he leave the road?

A. He left it in a very bad condition.

Q. State how much of the road had been completed at that time.

A. At the time Mr. Moore left he had very nearly completed the grading of the first 31 miles.

Q. How much of the track had been laid?

315 A. The track had been laid at that time—I could not testify on that point without——

Q. About how much?

A. Well, he had laid somewheres a little over ten miles of track.

Q. What was the condition of the credit of the company?

A. Very bad. The men were all clamoring for payment. Everybody that had attempted to assist it in any way was in trouble.

(Complainants' counsel objected to this line of evidence as not being in cross-examination, and his management had brought on disaster and ruin to everybody who was in any way, shape, or manner connected with the enterprise either through assisting him or in working for the company.)

Q. Through whose credit was the Reno Division completed? Who were the parties through whose credit the Reno Division was finally completed?

(Objected to as not in cross-examination and incompetent.)

A. McMurray and the parties named on page 73 of the Minute Book of the company already in evidence.

Q. What inducement, if any, did the corporation defendant hold out to these parties as to the payment of any debts then due or any debts that should fall due afterwards for matters that they
316 had furnished or should furnish for building the road?

A. Well, the only inducement that we could hold out was that if we could build this 31 miles, get the road equipped, and get it in running order we might be able to pull the affair through and get money, go on and after awhile repair the damages that had been done. That was the only inducement that we could hold out.

Q. Was there any inducement held out by the company as to the assumption of the debts of Moore in case he did not pay them?

A. Yes In talking with Mr. McMurray, Manning & Berry, Bragg, and all the principal creditors of the road, the inducement was held out by myself and by Mr. Manning and Mr. Berry and Fulton. It was a conference every day here for 2 months of the directors and the chief creditors as to how to get this thing in shape.

Q. What was the consideration between the corporation defendant and H. J. McMurray upon which he executed the release of
317 the lien that you have mentioned, which he had upon the property of the defendant corporation?

Mr. KING: Was there a written contract between the company and McMurray?

A. There was no written contract between the company and McMurray other than an assurance by myself and Mr. Manning to Mr. McMurray that the company would see him paid and would endeavor in some shape or manner to reimburse him for the great outlays he had made for the credit of the company.

Q. Where did Mr. McMurray live?

A. In San Francisco.

Q. These charges made here for expenses to Reno were in fact for expenses in going to Reno to attend to the business of the company?

A. Yes, sir.

Q. What were these taxes, $600?

A. The company's finances were at a very low ebb, and there was not one dollar in the treasury. The taxes became due on the road

and Mr. Fowler, the vice-president, wrote me in San Francisco that the money must be raised somehow. I sent him the money,
318 and the taxes were paid by Mr. Fowler, and subsequently I assigned that claim to Mr. McMurray.

Q. The taxes paid were actually the taxes due by the company?

A. Yes, sir.

Q. This interest on $8,000—$66.66—was that for money McMurray paid out?

A. Yes, sir; Mr. Geo. L. Woods and Mr. McMeacham, directors of the Co., came to me in San Francisco and told me that without they could raise $8,000 to put up as a guaranty in the rolling-mills office that the iron would be paid for when that first 5 miles was laid the thing would burst, and that all they wanted was to get the thing started—get the 5 miles down—when Mr. Moore would receive $40,000 and this $8,000 could be paid back. Mr. Moore had, by a transaction with Mr. Main, secured his credit at the rolling mill to the extent of $10,000, and that $10,000 and the $8,000 that I was induced to put up made the amount necessary to buy this first 5 miles — iron. The iron cost $18,000—iron and freight. I did not have the money at the time. I went to McMurray and bor-
319 rowed the $8,000; got a certified check for it and deposited it with the rolling mill as security, that Mr. Moore would pay it when the 5 miles was ready, and Mr. McMurray put up the money and he charged that interest.

Q. "Sept. 9, 1881, cash paid engineers, $1,000." That was a debt of the company which it owed?

A. Yes. Mr. Fowler requested it to be done here when the company's credit was very low. The engineers afterwards came to me and told me themselves they did not have money enough to buy bread.

Q. Cash paid, sheriff's fees, $166.

A. That was cash paid out for fees in this suit of McMurray against Moore.

Q. And lawyers' fees, $600—the same thing?

A. Yes. I think the cost of filing the lien is in there, too.

Q. And salary as agent of the company, $1,000. Was he a director of the company at that time—October 5, 1882?

A. No, sir. Mr. McMurray spent a great deal of time on the business of the company in San Francisco.

Q. It was not for services as director?

A. No, sir; it was for making purchases, attending to the shipment of iron, advancing the credit of the road—all such
320 matters as that. For instance, when I returned from New York, a year ago last spring, our credit was very low. I had power to draw on Mr. Moran for $75,000, but we did not have any money at all to buy iron with. We had about $7,000 worth of iron to buy to lay that two miles then. We had to have some money to pay the freight and he had no money. He had lost his entire fortune in this matter, and he pledged his homestead in San Francisco to the Pacific Bank for advances to buy this two miles of iron. Subsequently the bank was repaid out of the first draft Moran sent, and

so the thing was kept moving along by Mr. McMurray's credit. He spent all his time. It was very small compensation, I think, for what he had done.

Q. Did McMurray ever authorize any agreement on the part of this company except an agreement containing the provision that the company should assume to pay all his debts?

(Objected to as not in cross-examination, incompetent, and immaterial.)

A. No.

321 Q. You have stated that $8,000 was allowed to you by the company, including your expenses for physicians, nurses, and including a compensation for your services?

A. Yes, sir.

Q. I will ask you whether those services in which you made that charge were as director or president.

A. I did not consider it so. I considered that was for my services as superintending the construction out on the road, as agent of the company in New York, and for my time being devoted to the interest of the company.

Q. What did you actually do as superintendent during that time?

A. Well, during that whole summer I consulted with Mr. Sullivan, who was chief track-layer. I went out on the road every day; saw what was best to be done. I went around and attempted to bolster up the credit of the company and got these liens off, and, in fact, I tried everything a person could do to rehabilitate the credit of the company and put the affairs so that we could complete the construction.

322 Q. As a matter of fact, was not the road constructed—the Reno Division constructed—and completed under your supervision up to the time this bill was allowed, and was it not allowed for such services as that?

A. Yes, sir.

Q. And not money for your executive duties as president?

A. Yes, sir; I considered it so.

Q. As a matter of fact, Lonkey and Smith actually owned the ties and timber and sold it to the company as you have stated?

A. I so considered it at the time. We was in a difficult position We had to make concessions. We were at the mercy of all our creditors. We could not move without our doing as they wished us to do.

Q. I find on page 73 an item, "W. E. F. Deal, $4,500." Now, Mr. Balch, was it not a fact that $1,000 of that item was a debt due by Thomas Moore to W. E. F. Deal and assumed by the company?

(Objected to by complainants' counsel as not being in cross-examination.)

A. Yes, sir.

Q. Was not $3,500 of that item for legal services by W. F. F. Deal rendered up to that date to the company?

A. Yes, sir.

323 Q. I find on page 73 of the record introduced in evidence an item, "W. Webster, in the sum of $6,500." Was not $1,500 of that sum a debt due by Thomas Moore due Mr. Webster?

(Objected to by complainants' counsel as not being in cross-examination.)

Q. Which the company assumed, and was not the balance of that item for legal services of Mr. Webster up to that date directly to the company?

A. That is so.

Q. I find an item, "Clayton Belknap, in the sum of $350." Don't you know that that item was an item for services by Mr. Belknap as commissioner for the corporation, defendant, and for the plaintiff in a case wherein Thomas Moore was plaintiff and the company, Sunderland, Coffin, McMeacham, and others were defendants?

A. Yes, sir; I know that because I testified before him myself.

Q. Now, as to the bonds here in the name of Lewis, I believe you testified that those bonds were issued on my account?

A. Yes, sir.

Q. By whom were they sent to Lewis?

A. By my direction, and you directed me.

Q. The three bonds to Dana?

A. The same way.

324 Q. By whose directions were the last five bonds issued to Wright?

A. Judge Webster's.

Q. In relation to all of these bonds for debts mentioned on page 73, you know personally about the 56 bonds delivered to McMurray?

A. Yes, sir; as to the other 61, I sent them to Mr. Manning. He paid them out.

Q. Can you by reference to this minute on page 73 tell when those bonds were actually delivered?

A. I don't know.

Q. Do you know the date when McMurray's 56 bonds were issued?

A. February 2d, 1883.

Mr. KING: Were they delivered before or after the 61?

A. On the same day I sent them to Manning.

Q. Did the persons to whom these bonds were delivered—these 147 bonds—acknowledge to the company full satisfaction of the claims to that extent upon the delivery of the bonds to them?

A. I so understood from Mr. Manning.

Q. Don't you know that from the vouchers on file?

A. Yes, sir; that was the agreement.

325 Q. As a matter of fact, you on behalf of the company agreed with Moore that the company would assume these debts, and in pursuance of that agreement these debts were assumed and these parties accepted the bonds?

A. It was understood that the company was to pay it. It was not agreed how or when they were to pay it; that was a thing we

could not decide on, but finally the company was to pay them in some way.

Q. Was not the assumption by the company of these debts and the acceptance of the bonds by these parties of the company on a settlement with Moore to the amount represented?

(Objection as not being cross-examination and calling for a conclusion of the witness.)

A. It was.

Q. In your direct examination I understood the reporter to read from his short-hand notes that you had testified that Moore and the company and these parties to whom the bonds were issued never had an agreement as you stated. How did you understand that question that was asked you?

A. That the company and these creditors never got together
326 at the same time and had an agreement with Moore.

Q. You have stated that these parties never did agree; but I understand you to explain this statement by saying that the parties never got together in the same place and made the agreement. Is that what you mean?

A. That is what I mean.

Q. Now, as to this agreement about which Judge King asked you and about the parties having notice of it, Mr. Balch, don't you recollect now that the agreement that you have mentioned was never seen by me or delivered to me and was never read by me until after these suits were commenced and it was produced by you for the purpose of seeing what bearing it had upon this case now pending?

A. The only time that I ever spoke to you in relation to it was at the time you came back from the East. I was under the impression that you saw it then, but I think you could not have seen it.

Q. You did not have the agreement with you?

A. If I had had it you could not have read it.

Q. As a matter of fact, you told me you had made an agree-
327 ment without giving me the terms or anything of that kind?

A. Yes, sir.

Q. Without stating any of the terms?

A. Yes, sir.

Q. You do recollect that after this suit was brought that then I did see the agreement?

A. Oh, yes.

Q. What examination, if any, did the directors make as to adjustment of these claims before assuming and allowing them?

A. They were personally cognizant of every one of these claims. They knew that the money had been actually spent in the construction of the road, or else it had been labor that had been given or materials furnished or legal advice or something; it had all gone for the good of the corporation.

A. As a matter of fact, did not the board of directors in many instances cut down the claims made by the parties?

A. Cut down the lawyers. It is a pity we did not cut them more.

Q. Didn't they reject many claims that were presented?

A. Yes.

Q. Mr. Balch, the amounts paid by Manning & Berry upon
328 the judgment you have mentioned in the Hatch case—was not that a judgment that was rendered directly against the corporation defendant, The Nevada & Oregon Railroad Company?

A. It was.

Q. And the amounts allowed them and for which they received bonds as far as that was concerned, was for a debt of the company which they were legally obliged to pay, which they were sued for and judgment recovered, and the bonds they received were for actual payments made by them for the company?

A. It was for actual money paid.

Q. Here is a bill for $1,770.35. The first item of that bill is $97.47. I will ask you to examine that and state whether the items composing that were not for payments connected with this Hatch suit.

A. Yes; under the laws of this country you have to pay the costs preliminarily, and they came into Mr. Manning's store every month, I presume, and they had to pay these costs.

Q. The item of $840.15. Were not the items composing that bill for disbursements made by them in the suit that was brought
329 by Hatch against Bragg and Manning and Berry upon this bond you have mentioned?

A. Yes, sir.

Q. The next item, 832.73. Is not that bill composed of items for judgment and costs against Moore which the company assumed to pay?

A. Probably Mr. Manning knows more about that than I do. I think that suit was against the corporation. I will explain: Mr. Moore claimed that he did not owe Phi. Bates this money, and Phi. Bates sued and attached at the same time that Hatch did and Mr. Berry and Mr. Hagerman. I remember all about it; they went on the bond. Subsequently Moore told me that that was a bill he did not owe, but Phi. Bates had sued him, and the company should pay it, and that was the only way the company could pay it.

Q. How much of your time—from the time that you took charge of the construction of the road until that bill, how many months of your time was actually used?

A. Well, I returned here in April, 1882. All my time was used from that time on.

330 Q. During that time, from the time that you took charge of the construction of the road until that bill of $8,000 was allowed, your whole time was given to the company?

A. Yes, sir.

Q. How much of that time was occupied by you in your official duties as executive?

A. Two or three days altogether.

Q. And the other was used in the services. In whose employment were you when you were constructing the road?

A. Corporation defendant up to the time this $8,000 was allowed.

Q. On whose business did you go to New York?

A. Corporation's.

Q. You were in the service of the corporation up to the time the bill was allowed?

A. From the time I went to New York and before I went to New York, about the 19th. I got to New York the first of February, 1882.

End of cross-examination.

Redirect examination of D. W. BALCH by Mr. KING:

Q. I understood you to testify, Mr. Balch, that there were daily conferences between the directors and creditors for two months'
331 time?

A. Yes.

Q. Were those conferences between directors sitting as directors or talk on the street?

A. It was talk on the street. One time I remember we were in session and a lot of fellows came in there and wanted to hang us; that was the kind of talk we had. We often consulted as directors before I went to New York.

Q. During this time you said there was daily conferences was there any conferences between the directors sitting as a board and the creditors?

A. Yes, sir.

Q. How often?

A. I could not state how often.

Q. The question is between directors sitting as a board and the creditors.

A. I could not say.

Q. Would you say more than two or three times?

A. Possibly; the record would show how many times we were in session.

Q. The record would not show there was a conference between the board and creditors.

A. Whenever we had meetings that question was talked over.

332 Q. My question is concerning conferences between the creditors and the board.

A. As many as there was meetings.

Q. You are certain there were creditors present?

A. Yes.

Q. This $8,000 certified check you deposited with the rolling mill, that was to secure a contract between Moore and the rolling mill?

A. Yes, sir; that was to enable the iron to be moved.

Q. The iron that was being procured by Moore and for security at that time, was it not?

A. Yes, sir.

Q. Now, the $1,000 paid by McMurray to the engineers, was that for work done for the first corporation?

A. No; for the present corporation.

Q. I will ask you if the amounts of $4,500 issued to W. E. F. Deal and $6,500 issued to W. Webster, specified on page 73 of the

record, included anything for services rendered Thomas Moore in defending him against the charge of murder—anything of that kind?

A. No, sir.

Q. You testified that you agreed with Moore that the company should pay Moore's debts. Had you any authority from the
333 company to make any such agreement with Moore?

A. I had a resolution from the company; it is on the Minute Book, pages 24, 25.

Q. I understood you to say that you were in the employment of the company from January, '82, to January, 1883?

A. Yes, sir.

Q. Who were you employed by?

A. Well, there was a general resolution in relation to it; it was the wish of the directors that I should have charge and attend to matters to the best of my ability.

Q. You had not been directly employed by anybody?

A. Only an understanding. The company never had any money in the treasury to pay anybody, except laborers and track iron and things which it was absolutely necessary the company should get. It was always expected and hoped that the company would be in funds, but that time never came.

Q. You were never hired by anybody?

A. Not by resolution of the board.

Q. Any other way?

A. Only by an understanding by the directors.

334 Recross-examination of D. W. BALCH by Mr. DEAL:

Q. You say you were authorized by resolution of the board. I will call your attention to pages 24–26 of the Minute Book and ask you if that is the resolution you speak of?

(Witness reads over the minutes and is asked whether that is the resolution under which he stated to Judge King he acted.)

A. Yes, sir; that is the resolution.

Mr. DEAL: I offer the minutes which I have marked there in connection with the cross-examination.

The following is a copy of the matter so offered: On motion of Mr. Fowler, seconded by Mr. Fulton, the following preamble and resolution were unanimously passed: Whereas D. W. Balch, acting president of the Nevada and Oregon Company, contemplates visiting the city of New York in the near future for the purpose and with reference to a settlement of the present financial embarrassments of said company, and it being a matter greatly to be desired
on the part of the directors of said company and its *bona fide*
335 stockholders that some amicable adjustment be made between the company and Thomas Moore, contractor, with reference to such matters of difference as may exist between Thomas Moore and the company arising out of his contract with the company for the construction of its railroad, also any difference that may exist

between Thomas Moore and the company regarding such financial matters as may require settlement and adjustment; and whereas it is the judgment and wish of the board of directors, also of the *bona fide* stockholders, as far as known, of the company that some arrangement be made with Moran Brothers, of the city of New York, who are the bondholders-in-chief of the company's mortgage bonds hitherto negotiated regarding the future financial condition of the company and the construction and completion of the company's road as far as the junction near Beckworth Pass, northerly from Reno; and it being also desired that such completed arrangements, so far as the same can be arranged, be made with reference to the future in general touching the construction and completion of the road, and the money necessary for that, and also such
336 other matters as may be necessarily involved and incident to the above end and purpose: Be it therefore resolved, That D. W. Balch, acting president of said company, be, and he is hereby, appointed, authorized, and empowered to do everything necessary touching the premises above stated, and that he have full power and authority to arrange and complete all matters whatsoever necessarily involved in the premises above stated, the said company, by its directors, hereby ratifying and making valid and binding upon the company each and all of the acts of the said D. W. Balch, acting president, touching the premises or that may be in any manner included therein.

On motion of Mr. Fowler it was unanimously resolved that A. H. Manning, secretary *pro tem.* of this adjourned meeting, held this 13th day of January, A. D. 1882, be, and he is hereby, authorized to sign, certify, and affix the official seal to a certified copy of the preamble and resolution at this meeting passed authorizing and empowering D. W. Balch to do the several acts, matters, and things in the preamble and resolution by this meeting passed.

337 Here the further taking of testimony in said cause was adjourned till Sept. 25th, 1883.

I have read over and corrected the foregoing — pages, being my direct examination, cro-s-examination, redirect, and recross-examination, and the same is correct.

D. W. BALCH.

Subscribed before me and in the presence of the attorneys for complainants and defendants this 28th day of Sept., 1883.

N. SODERBERG,
Special Examiner.

RENO, NEVADA, *Sept.* 25, 1883.

The parties, by their respective counsel, met pursuant to adjournment and announced themselves ready to proceed with the taking of complainants' testimony.

Mr. Clarke, for complainants, offered in evidence the following instruments, marked Exhibits "A" to "H," inclusive.

It was stipulated by counsel for both parties that the special ex-

aminer should compare said documents with those on file in
338 the recorder's office of Washoe county and certify to their being correct copies of said instruments as recorded, and when so certified said Exhibits A to H, inclusive, should have the same force and effect as if properly certified by the said county recorder and should be admitted in evidence, subject to defendant's objection to each of them that were incompetent, irrelevant, and immaterial.

The following pages, — to —, inclusive, constitute the documents so offered by complainants:

EXHIBIT A.

Articles of agreement made and concluded this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth: That whereas the said party of the second part has represented to the party of the first part that the sum of seven hundred thousand dollars cash can be obtained through stock subscriptions to
339 be applied to the construction and equipment of the Nevada and Oregon railroad upon the portion of the same extending southerly from Beckwith Pass to Reno, Carson, and the vicinity of Bodie, including a branch to Virginia City, running from a point about sixteen miles southerly from Reno and upon the Carson Division, and that the entire work of building and equipping said portion of railroad, including grading, bridging, track, buildings, turn-tables, switches, right of way, clearing and grubbing, structures and superstructures, ballasting, culverts, cattle-guards, trestles, and such other material and work as may be necessary to a complete, continuous, and properly constructed and equipped railroad, can be thoroughly and substantially performed between October first, 1880, and March first, 1881, at a cash outlay not exceeding twenty hundred and thirty-five thousand dollars, including allowance to the railroad company of ten thousand dollars for engineering, stationery, and incidental expenses, and of thirty thousand dollars for expenses in securing right of way; that the business of the road will be highly
340 remunerative as soon as thirty miles shall be put in opperation, and that upon the completion of the entire distance aforesaid and for ten years thereafter the business income of the road will be fully three hundred and fifty thousand dollars per annum in excess of all expenses, interest, and taxes, and that fifty-year eight per cent. first-mortgage bonds to the extent only of ten thousand dollars per mile and capital stock to the extent only of twenty thousand dollars per mile for the first one hundred and eighty-five miles will be issued, making a total of eighteen hundred and fifty thousand dollars in first-mortgage bonds and thirty-seven hundred thousand dollars par value in stock upon the entire one hundred and eighty-five miles: Now, therefore, in consideration of the above and *if* the covenants, agreements, and payments hereinafter men-

tioned to be made and kept and performed by the said party of the second part, and in further consideration of the sum of one dollar to the party of the first part in hand paid by the party of the
341 second part, the receipt whereof is hereby acknowledged by the party of the first part, and for and in consideration of the covenants and agreements herein to be kept and performed, and in consideration of the sum of one dollar to the party of the second part in hand paid by the party of the first part, the receipt whereof is hereby acknowledged by the party of the second part, it has been agreed and by these presents it is covenanted and agreed by and between the parties hereto, first, that the party of the first part will construct and finish on or before the first day of March, 1881, in a substantial and workmanlike manner the proposed railroad and as follows: As soon as the sum of two hundred and fifty thousand dollars in valid stock subscriptions shall be obtained to commence work upon the Carson Division, extending thirty miles, more less, from Reno to Carson, and including the Virginia Branch, extending twenty miles, more or less, from near Washoe Lake to Virginia City; as soon as an additional one hundred thousand dollars in
342 valid stock subscriptions shall be obtained to commence work upon the Reno Division as far as Beckwith Pass from Reno, thirty miles, more or less; as soon as an additional three hundred and fifty thousand dollars in valid stock subscriptions shall be obtained to commence work upon the Bodie Division, extending one hundred and five miles, more or less, from Carson to the vicinity of Bodie, and for the purposes of this contract it is concluded that the total distanec as aforesaid aggregates one hundred and eighty-five miles, and that in addition thereto necessary sidings shall be constructed at proper points and connected with the main tracks by proper switches, the total aggregate length of said sidings not to amount to more than five miles.

Second. The work under this contract does and is intended to include all the graduation, masonry, bridging, iron rails, ties, tracklaying, ballasting, turn-tables, structures and superstructures, and necessary buildings, locomotives, and cars, and such material and work as may be useful to complete a continuous and properly
343 constructed and equipped railroad between the points aforesaid, excluding fencing.

Third. The road-bed is to — graded for a single track of three-foot gauge.

Fourth. Graaduation includes all excavations and embankments required for the formation of the road-bed and for street or road approaches and crossings and all excavations for foundation of culverts, piers, abutments, walls, and bridges, and for drains, sidings, foundation of station-houses, engine-houses, turn-tables, or other necessary structures, and all track slopes & ditches shall be completed in a thorough, neat, and workmanlike manner, and all graduations shall be of ample dimensions.

Fifth. At all crossings of public roads commodious graded approaches shall be constructed for the benefit of the public and all

farm roads shall be properly graded at points of crossing to enable the residents to cross the railroad track with ease and safety.

Sixth. Culverts and drain pipes, if any are necessary, shall be of proper material and dimensions and carefully and substantially built or laid.

344 Seventh. All bridges and trestles shall be built under skilled supervision and of sound materials, timbers, and bolts, and be of sufficient strength to safely support at the ordinary speed freight and passenger engines and trains of the same weight as those now in service and use on similar railroads.

Eighth. The track shall be properly laid and graded and the ties thoroughly tamped.

Ninth. The ties shall be of suitable wood not less than five by six inches and sixty-four inches in length, and shall be placed at regular intervals as nearly as may be and not less than twenty-six hundred and forty per mile, and upon Virginia Branch shall be of red fir, six by seven by sixty-four inches.

Tenth. Rails shall be of good merchantable iron of the "T" pattern and weigh not less than thirty-five pounds per yard except where a straight or tangent line the grade may be less than sixty-one feet per mile, when thirty-pound rails may be used, and

345 wherever thirty-pound rail is used there must not be less than twenty-nine hundred and ninety-two ties per mile, the rails to be laid so as to prevent expansion from affecting the allignments and to be properly spiked and spliced with fish plates at the joints, and upon all curves a proper elevation shall be given to the outer rail.

Eleventh. The track shall be ballasted with such material as can be found contiguous to the line, and ballast is in no instance to be hauled except by train and not to exceed a distance of three miles.

Twelfth. The space for the road-bed shall be cleared of all trees, saplings, and sagebrush, and wherever embankment is less than two feet in height all necessary grubbing shall be done in advance.

Thirteenth. All switches and frogs needed, not exceeding twenty-five in number of each, are to be supplied and properly placed.

Fourteenth. Suitable buildings, not exceeding fifteen in number, are to be erected for depots and engine-houses, the latter to

346 be of sufficient size each to contain three convenient stalls for engines.

Fifteenth. Bridges are to be three, four, or five in number, but not more than five, and if in any instance a bridge shall exceed one hundred feet in length from bank to bank the railroad company shall pay to the party of the first part fifty dollars for each foot so in excess, and wherever trestle-work may be demanded the railroad company shall pay to the party of the first part twenty-five dollars per thousand feet, B. M., for the completed structure, according to the quantity of lumber employed, this payment to cover bolts and iron-work and workmanship.

Sixteenth. The party of the first part is to contribute toward the payment of engineering, stationery, and incidental expenses during the progress of construction of the railroad a sum of money, not to

exceed ten thousand dollars, in such sums as the same may be needed for the actual wants of the company, and no greater amount than two thousand dollars in any one month;
347 also toward the payment of expenses incurred in procuring right of way a sum of money not to exceed thirty thousand dollars, as the same may be needed, but no greater amount than six thousand dollars per month, and in the event that so much as ten thousand dollars *and* or thirty thousand dollars shall not be required for the purpose or purposes specified, then, at the completion of the work of construction as aforesaid, there shall be an equal division of such surplus, half to the party of the first part and half to the party of the second part; and in the event of more than ten thousand *and* or *or* thirty thousand dollars being required for the purpose or purpose specified, then the railroad company shall, out of its one hundred thousand dollars reserve stock, provide for and pay the same.

Seventeenth. The locomotives and cars shall be of good make and new and of such patterns as are now approved upon successful railroads of similar gauge, grades, and general requirements,
348 and the railroad, as above provided for, is to be fully completed and equipped on or before the first day of March, 1881, always provided that the party of the second part shall punctually keep and perform the covenants and agreements herein contained on its part and shall do all things necessary to provide all right of way and free access for the party of the first part to all necessary localities promptly and in due season. It is, however, understood that if the track shall be actually laid so that it will be absolutely safe for passenger trains at a speed of twenty-five miles an hour and freight trains at a speed of twenty miles an hour to run over said road and for business operations to be safely carried on throughout its entire length from Reno to Bodie, including the branch to Virginia, and from Reno to Beckwith Pass by March the first, 1881, then the ballasting, adjustment of slopes, and other work not essential to safety may thereafter be completed, provided the same shall be pushed forward with vigor and without intermission.

349 Eighteenth. The entire work shall be done under the supervision of the president or other duly appointed agent of said company, and the certificate of S. H. H. Clark, general superintendent of the Union Pacific railroad, or, in case of his inability from any cause to act, the certificate of Jonathan Dwight, of New York city, as to the shipment, supply, or delivery of material, the quality of the work and material, its sufficiency under this contract, and for the purposes designated, together with his final acceptance and certificate of the acceptance of the road, shall be binding upon both parties hereto, it being agreed that his determination as to all questions arising under this contract, including the question whether any installments hereinafter provided to be paid is due, shall be conclusive. It being moreover agreed that his certificate may issue upon personal inspection and knowledge or upon joint letter or other notice from the president of the company and Thomas Moore as to any performances under this contract; and if at any

time said president and Thomas Moore should fail to agree as to joint letter or notice either of them may call upon said S. H. H. Clark, or in his absence or inability upon said Jonathan Dwight, to make the necessary personal inspection as to the facts and decide all matters in controversy.

Nineteenth. All earth excavation in excess of six thousand cubic yards per mile average on any division or branch shall be paid for extra at the rate of twenty cents per cubic yard, and in the event of there being any rock material encountered in excavation the same shall be paid for extra at the rate of one dollar per cubic yard, and any hard pan, indurated earth, or cemented material, not rock, at the rate of forty cents per cubic yard, and any excess over twenty cents per tie in the cost of ties delivered at Reno or elsewhere on line of the railroad shall be paid extra to the party of the first part by the party of the second part, and all tunnel excavation at the rate of three dollars and fifty cents per cubic yard, including the necessary timbering and zinc lining, and no charges other than those provided for herein are to be allowed to the party of the first part for work done on or about the subject-matter or matters of this contract.

Twentieth. If, at any time after commencing work, the party of the first part shall have failed to perform up to that time a reasonable proportionate amount of the work of construction or of the shipment of material, then and in that case the party of the second part may take such necessary measures as shall insure the completion of the road in the manner and by the time herein mentioned, and in such event it is authorized to pay for work or material so ordered and used or performed out of the stock bonds or funds agreed to be paid said party of the first part for the completion of said road, and to offset such payments against the amount due under this contract, rendering only the surplus, if any, to the said party of the first part, and upon the presenting to the custodian of the bonds and stock herein mentioned of satisfactory evidence of the expenditure of moneys thus by said party of the second part such custodian shall pay to said party of the second part the amount expended in said stock and bonds.

Twenty-first. It is distinctly agreed and understood that the decision of S. H. H. Clark or, in his absence, of Jonathan Dwight aforesaid in any dispute which may arise between said company and the contractor shall, as to matters provided therein or relative to the same, be final and conclusive as to both parties.

Twenty-second. The party of the first part agrees to inspect profiles, maps, and locations and confer with parties desiring to subscribe to the stock and with those desirous of making contracts for transportation of wood, lumber, or other freights, and the party of the second part covenants and agrees to assist the party of the first part in satisfying himself as to the correctness of the representations hereinbefore contained, and in the event that the party of the first part does not obtain satisfactory evidence of the fulfillment of said representation he shall be at liberty to cancel this contract by notice in writing, addressed to the office of

the party of the second part, at Carson, Nevada, as soon as he can determine the matter, and not later than ten days after receiving the working profiles and maps of any division for inspection, and in such event the said party of the second part shall pay to him the sum of five hundred dollars for loss of time, services, travelling and other expenses and damages; and if said party of the first part shall not, by notice as aforesaid, cancel this contract, then such failure to notify shall be deemed conclusive evidence that he has satisfied himself, and that this contract is to remain in full force and effect without claim for damages by or against either party hereto or any party named herein on account of said representations, which, for all purposes, are to be deemed as satisfactorily established, it being understood that the issue of the first-mortgage bonds is to remain at the limit of eighteen hundred and fifty
354 thousand dollars and the capital stock at thirty-seven hundred thousand dollars, par value, as aforesaid.

Twenty-third. The equipment of the Carson Division is to consist of four locomotives, one passenger car, one combination car, twenty box cars, seventy flat cars, five ore cars, two hand or truck cars, and necessary tools for track repairs; of the Virginia Branch, one locomotive, one passenger car, and one combination car, ten box cars and ten flat cars, two ore cars, one hand or track car, and necessary tools for track repairs; of the Bodie Division, five locomotives, two passenger cars, one combination car, twenty box cars, seventy flat cars, three ore cars, five hand or track cars, and necessary tools for track repairs; of the thirty miles of the Reno Division, two locomotives, two passenger cars, and thirty flat cars; and the said railroad company, party of the second part, covenants and agrees to pay to the party of the first part for the railroad constructed and completed as aforesaid, including the equipment, the sum of two hundred and
355 fifty thousand dollars in lawful money and seven hundred thousand dollars in the first-mortgage bonds and seven hundred and fifty thousand dollars in the capital stock of said railroad company at par, for the Carson Division, including the Virginia Branch, being in all fifty miles, more or less; the sum of one hundred thousand dollars in lawful money and three hundred and ten thousand dollars in the first-mortgage bonds and four hundred and fifty thousand dollars in the capital stock of said railroad company at par, for the Reno Divison as far as Beckwith Pass, being thirty miles, more or less; the sum of three hundred and fifty thousand dollars in lawful money and eight hundred and forty thousand dollars in the first-mortgage bonds and seventeen hundred thousand dollars in the capital stock of said railroad company at par, for the Bodie Division, being one hundred and five miles, more or less, and amounting in the aggregate to seven hundred thousand dollars in lawful money and eighteen hundred and fifty thousand dol-
356 lars in the first-mortgage bonds and twenty-nine hundred thousand dollars in the capital stock of the said railroad company at par for the one hundred and eighty-five miles, more or less, constructed and equipped, and the payments to be made in the following manner: On or before the first day of September,

proximo, the sum of five hundred dollars cash; upon the shipment of the first one thousand tons of rails to Reno, twenty thousand dollars in cash, and upon the arrival of said rails at Reno one hundred and fifty thousand dollars in the first-mortgage bonds and three hundred thousand dollars in the stock; upon each subsequent shipment of rails, splices, and spikes for each one thousand tons, one hundred and twenty-five thousand dollars in first-mortgage bonds and three hundred thousand dollars in the stock; upon the completion of each fifteen miles of grading, fifteen thousand dollars in cash; upon delivery of each ten thousand ties at Reno, or elsewhere on the line of the road, three thousand dollars in cash; upon completion of each fifteen miles of
357 track, five thousand dollars in cash; upon the completion of each bridge of over fifty feet in length, five thousand dollars in cash; upon completion of each one thousand feet of trestle-work, five thousand dollars in cash; upon completion of each five engine-houses or other buildings, five thousand dollars in cash; upon completion of each two hundred feet of tunnel, seven thousand dollars in cash; upon delivery at Reno or elsewhere upon the line of the road of each locomotive, ten thousand dollars in cash; of each two passenger cars, four thousand dollars in cash; of three combination cars, five thousand dollars in cash; of each five ore cars, three thousand dollars in cash; of each ten box cars, eight thousand dollars in cash; of each twenty-five flat cars, twelve thousand dollars in cash; of each two hand or track cars with tools, five hundred dollars in cash; upon completion of each division as aforesaid, final settlement to be made within ten days by payment to said party of the first part of all balances of stock and bonds and cash. All cash payments under this contract shall
358 be made at Reno, Nevada, unless otherwise agreed, and all payments of stock and bonds shall be made in the city of New York. If said party of the second part shall not be able at the time fixed for the final settlement to pay said party of the first part the balance of the cash payments due him for any cause, then said party of the first part shall receive bi-weekly all the net receipts of said railroad, after deducting the working expenses and the accruing interest on its first-mortgage bonds, until said balance shall be fully paid, and shall also receive further, as security for the payment of said balance, assignments from the said company of all moneys owing to it for stock subscriptions; if said company shall fail at any time to pay over said net receipts or to assign said stock subscriptions as aforesaid, then said party of the first part is hereby empowered and shall take control of all receipts and income of said road, as provided in section twenty-six of this contract, including the penalty therein stated; and said party of the second part further agrees that the whole amount hereinbefore covenanted to be
359 paid to the party of the first part shall be paid in any event on or before the thirty-first day of March, A. D. 1881.

Twenty-fourth. The party of the second part further covenants and agrees to deposit in the hands of some person hereafter to be named by said party and acceptable to the party of the first part,

in New York city, on or before October first, A. D. 1880, the sum of fifty thousand dollars in cash, or so much thereof as said company shall by strenuous efforts have realized from the collections of subscriptions to its capital stock to that date, and on or before October first, A. D. 1880, twenty-nine hundred thousand dollars of the capital stock of said railroad company, and on or before October fifteenth, A. D. 1880, eighteen hundred and fifty thousand dollars of first-mortgage bonds of said company, all to be applied to the carrying out of this contract; and it is further agreed that in the event of a failure to agree upon any other custodian for the securities that Gen'l C. T. Christonsen shall act in that capacity.

Twenty-fifth. In the event that the party of the second part (on account of the benefits to accrue from a speedy completion
360 of the work) shall demand from the party of the first part to furnish rails costing more than eighty dollars per ton, delivered at Reno, the excess of cost over that price is to be paid to the party of the first part by the railroad company by applying one-half of the surplus earnings of the road after paying expenses and interest until the whole amount is liquidated.

Twenty-sixth. In the event of any failure at any time of the party of the second part to make a cash payment as specified in this contract the party of the first part shall receive, bi-weekly, all the net receipts of said railroad after deducting the working expenses and the accruing interest on its first-mortgage bond until such deficiency shall be fully paid. If said railroad company shall fail at any time to pay over said net receipts as aforesaid, then said party of the first part shall be entitled and is hereby empowered to take control of all the receipts and income of said road and to pay himself out of the same to the extent of such deficiency, after
361 first paying out therefrom the proper operating expenses and proportionate interest upon the first-mortgage bonds during the period of his control, and shall as soon as the deficiency is wholly paid or received by him return the control of said receipts and income to said company. During such control of receipts & income said party of the first part shall render an account to the auditor or controller of the party *of the party* of the second part of his receipts and expenditures as aforesaid at the end of every two weeks after he shall take possession thereof under this clause; and whenever, at any of said accountings, it shall appear that said party of the first part shall have received from said road, after deducting the aforesaid expenditures, the amount due him as aforesaid, he shall deliver up possession of said road to said party of the second part and shall pay over to it on demand any surplus there may be belonging to said party of the second part, under a penalty of double the income of said road during the time of any unauthorized detention.

362 In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors,

and caused its seal to be attached, this twenty-sixth day of August, A. D. 1880, at Carson City, Nevada.

[SEAL.] (Signed) THOMAS MOORE.

(Signed) NEVADA AND OREGON RAILROAD COMPANY,

By A. J. HATCH, *President.*

Attest:

[SEAL.] (Signed) JAMES R. JUDGE, *Secretary.*

STATE OF NEVADA, } *ss:*
County of Washoe, }

On this twenty-eighth day of August, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument
363 as a party thereto, personally known to me to be the person described in and who executed said annexed instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

STATE OF NEVADA, } *ss:*
County of Washoe, }

On the 28th day of August, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known
364 to me to be the person described in said instrument as such president and who executed the same as such president, who, being by me duly sworn, did depose and say that he resided in Reno, Nevada; that he was the president of the Nevada and Oregon Railroad Company, the corporation named in said instrument, as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same by virtue of the authority of the board of directors of said company for the uses and purposes therein mentioned freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

365 EXHIBIT "B."

Articles of agreement, made and concluded this fourth day of December, in the year of our Lord one thousand eight hundred and eighty, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon R. R. Company, of the State of Nevada, party of the 2nd part, witnesseth:

That whereas the aforesaid parties entered into a contract on the 26th day of August, A. D. 1880, for the construction and equipment of 185 miles of said Nevada and Oregon R. R.; and whereas since that date it has been found necessary to change the time and order of performance and of payments under said contract, thus rendering it indispensable and equitable to supplement said contract: Therefore, in consideration of the above and of the sum of one dollar paid to each party *to* the other, the receipt of which is hereby severally acknowledged, it is hereby agreed as follows:

First. The Reno Division as far as a point near Beckwith Pass is to be first constructed and equipped, and in the event the total distance, including sidings, shall exceed 31 miles the party of the second part to pay extra for such excess at the rate of $1.20 per foot lineal for the extra rails, fastenings, spikes, ballasting, ties, switches, frogs, and track-laying complete upon such extra length of line.

Second. Any dry masonry required upon the line between
366 Reno and the temporary terminus aforesaid shall be paid for by the company extra at the rate of $2.50 per cubic yard.

Third. For additional equipment the company shall pay extra the sum of $15,000, and all the above extra payments are irrespective of the extra payments provided for in the contract of August 26th aforementioned and shall be payable, at convenience of the Co., at or before final settlement with contractor for the present work.

Fourth. The first cash payment of $500 to contractor shall be made on or before January 1st, A. D. 1881, instead of Sep. 1st, 1880.

Fifth. Upon shipment of 1,000 tons of rails and splices, the company to pay the contractor $20,000 in cash; and upon arrival of same at Reno, $150,000 in 1st-mortgage bonds and $300,000 stock; and upon shipment of balance of rails for present work, $160,000 in 1st-mortgage bonds and $150,000 in stock.

Sixth. The company shall deposit with trustee, in New York, on or before January 10th, A. D. 1881, $10,000 in cash and the $450,000 stock, and on or before January 25th, 1881, the $310,000 in the 1st-mortgage bonds.

Seventh. Nothing in this contract is to be construed as abating or impairing any portion of the contract of August 26th, A. D. 1880,
which is hereby extended in all matters not conflicting with
367 the provisions of this instrument and the work under which is to be undertaken upon the 50 miles or 155 miles upon 30 days' notice at any time within one year from date, upon evidence furnished by the company and satisfactory to the contractor as to the fulfillment of the conditions regarding stock subscriptions.

Eight-. The entire stock to be issued upon the line from Reno to the temporary terminus, as herein stated, shall be limited to $600,000 without reference to any excess in distance over 30 miles and the 1st-mortgage bonds upon the same to $310,000.

Ninth. The work of construction shall be promptly commenced upon notice from the company and satisfactory evidence to the contractor of the proper prompt obtaining of right of way and of the realization of $100,000 cash from stock subscriptions during progress of the work, and the 30 miles shall be completed and equipped within 5 months from the date of commencing the work of graduation.

Tenth. The contractor shall allow and pay to the company, in installments as needed upon this work of 30 miles, the total sum of $4,000 for right of way and the total sum of $3,000 for engineering, stationery, and incidentals, and any excess over such totals shall be provided and paid by the company out of the $50,000 reserve stock or the proceeds thereof.

Eleventh. The contractor shall furnish additional equipments as follows: One combination car, 16 box cars, 4 ore cars, 2 hand cars, and track tools.

368 Twelfth. It is further mutually agreed that the average haul of material excavated from any cut on line of this work shall not exceed three hundred feet, and any surplus of material excavated may be wasted at convenient adjacent points, and all said material shall be measured in excavation, and whatever further material may be required and which shall be borrowed and deposited in embankments, shall be measured in embankment and paid for accordingly.

Thirteenth. The chief engineer of the company shall within 30 days from active commencement of graduation measure for progress estimates, and shall within ten days thereafter furnish the same to the company and contractor, and shall thereafter perform the same duty at each interval of 30 days.

Fourteenth. In the event that for mutual convenience it should be deemed advisable to avoid delays incident in communicating with Mr. S. H. H. Clark or Jonathan Dwight it shall be permitted whenever there may be perfect agreement between the president of this company and the contractor for payments to be made under this contract whenever due, and in such cases information of the same may be conveyed to Mr. Clark or Mr. Dwight with reasonable promptitude by letter.

369 In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors, and caused its seal to be attached this fourth day of December, A. D. 1880, at Reno, Nevada.

(Signed) THOMAS MOORE.

NEVADA AND OREGON RAILROAD COMPANY,

(Signed) By A. J. HATCH, *President.*

Attest:

(Signed) W. C. STARR, *Secr'ty.* [SEAL.]

STATE OF NEVADA, } ss:
County of Washoe, }

On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed said annexed instrument as a party thereto, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

370 STATE OF NEVADA, } ss:
County of Washoe, }

On the seventh day of December, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known to me to be the person described in said instrument as such president and who executed the same as such president, who, being by me duly sworn, did depose and say that he resides in Reno, Nevada; that he was the president of the Nevada and Oregon Railroad Company, the corporation named in said instrument as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same, by virtue of the authority of the board of directors of said company, for the uses and purposes therein mentioned freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

371 EXHIBIT "C."

Articles of agreement, made and entered into this fourth day of December, in the year of our Lord eighteen hundred and eighty, between Thomas Moore, of Elizabeth, New Jersey, and the Nevada and Oregon R. R. Company, witnesseth:

That whereas there is necessarily considerable delay in carrying out the provisions of the contract or the greater part thereof made between said parties on the 26th day of August, A. D. 1880; whereas it is believed that the necessary surveys can be completed in the

early ensuing spring, and that the 170 miles, more or less, of the Reno Division from near Beckwith Pass to the Oregon line can be built and equipped on the same basis as already agreed upon for the first 30 miles of said division: Now, therefore, it is agreed between the parties hereto that on the 1st day of June, A. D. 1881, or as soon prior to said date as $500,000 valid stock subscriptions can be obtained upon said 170 miles, the company shall notify the contractor and he shall promptly satisfy himself as to the said subscriptions being available for said construction and equipment, and shall within 30 days thereafter commence the work of constructing and complete the same with proper equipment within 12 months from date of notice from company, and the company shall pay him for the same in reasonable installments as the work progresses a
372 total of $500,000 in cash and $1,700,000 in 1st-mortgage bonds, the same being total issue upon said line, and $2,850,000 in the capital stock out of a total issue — $3,400,000 upon the said line.

In witness whereof the party of the first — hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by its president and secretary, thereunto duly authorized by resolution of its board of directors, and caused its seal to be attached this fourth day of December, A. D. 1880, at Reno, Nevada.

(Signed) THOMAS MOORE.
NEVADA AND OREGON RAILROAD COMPANY,
(Signed) By A. J. HATCH, *Pres.*

Attest:
(Signed) WM. C. STARR, *Sec'ty.*

STATE OF NEVADA, } *ss:*
County of Washoe, }

On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second district court of Nevada in and for said county of Washoe, Thomas Moore, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the person described in and who executed said annexed instrument as a party thereto,
373 and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness thereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

STATE OF NEVADA, } *ss:*
County of Washoe, }

On this seventh day of December, A. D. 1880, personally appeared before me, Mark Parish, the county clerk and *ex officio* clerk second

district court of Nevada in and for Washoe county aforesaid, A. J. Hatch, whose name is subscribed to the annexed instrument as president of the Nevada and Oregon Railroad Company, one of the parties named in and which executed said instrument, said A. J. Hatch being therein named as such president, who is personally known to me to be the person described in said instrument as such president and who executed the same as such, who, being by me duly sworn, did depose and say that he resided in Reno, Nevada; that he was the president of the Nevada and Oregon Railroad Company, the corporation named in said instrument as one of the parties thereto; that he executed the same as president of said railroad company; that he so executed the same, by virtue of the
374 authority of the board of directors of said company, for the uses and purposes therein mentioned freely and voluntarily and in pursuance of a resolution of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of said court the day and year in this certificate first above written.

[SEAL.] (Signed) MARK PARISH, *Clerk.*

EXHIBIT "D."

Articles of agreement, made and concluded the first day of February, in the year of our Lord one thousand eight hundred and eighty-one, by and between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth:

That whereas the aforesaid parties entered into a contract on the twenty-sixth day of August, A. D. 1880, for the construction and equipment of 185 miles of said Nevada and Oregon railroad, and again, for reasons therein recited, did enter into a supplemental contract upon the fourth day of December, A. D. 1880; and whereas since said last date said party of the first part has commenced work at the request of the board of directors of said Nevada and Oregon R. R. Co., by resolution of December 21st, 1880, the board therein assuring him of the filling of the stock subscriptions to amount
375 of $100,000 without delay; and whereas the party of the second part has failed to obtain the required amount of subscriptions, and the board by resolution of January 15th, 1881, has authorized the vice-president of the company, Hon. Geo. L. Woods, to enter into such further supplemental contract as may be necessary: Now, therefore, in consideration of the above and of the sum of one dollar paid to each party by the other, the receipt of which is hereby severally acknowledged, it is hereby agreed as follows:

First. The party of the second — is to complete stock subscription list to amount of $20,000 on or before Feb. 20th inst. and to settle all claims against the Co. to said date, including payment in full to contractor for labor and materials and advances to said date.

Second. The party of the first part, at request of the party of the second part, is to make diligent effort to secure the balance of

$80,000 stock subscriptions, heretofore a part of the guaranteed performance by the Co., and on, as before, March 31st proximo to notify the party of the second part if successful, and thereupon to commence and carry through the work and equipment of line to junction near Beckwith Pass with vigor and dispatch and complete the same within 90 days thereafter, and, if not successful, then the condition as to the obtaining $100,000 stock subscriptions to remain in full force as a duty of the party *of the party* of the second part, as per preceding contracts.

376 Third. The party of the second part is to deliver to the party of the first part the 450,000 — of stock as soon as engraved and certificates can be signed, and the $310,000 1st-mortgage bonds as soon as engraved and can be properly signed, and all on or before March 31st proximo.

Fourth. The party of the second part is to deposit in such bank or banks as may be designated by the party of the first part, immediately upon the receipt thereof, all monies, checks, or drafts or coin obtained subsequent to Feb'y 20th inst. from payment of stock subscriptions, the same to be held inviolate to provide for any or all payments under the contract with the party of the first part.

Fifth. The party of the first part is hereby permitted to use and lay in tracks rails of 30 lbs. weight per lineal yard exclusively, and is relieved from the demand for any heavier rail upon the line to Beckwith Pass.

Sixth. Any cash payment or balance which may remain due to the party of the first part at conclusion of the work under this contract and the preceding ones shall be made by sale at par of any reserve stock remaining in treasury or by delivery to the party of the first part of second-mortgage bonds at the rate of 80% of their face value.

Seventh. Nothing in this contract is to be construed as abating or impairing the right of either party hereto, as provided in the preceding instruments hereinbefore referred to, or as in any

377 way effecting or impairing said instruments, and this contract is hereby declared to be supplemental and subsidiary to them and only for the purposes explicitly stated herein.

In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part has caused these presents to be signed by its vice-president, at the city of New York, the day and year first above written.

(Signed) THOMAS MOORE. [SEAL.]
(Signed) GEO. L. WOODS, [SEAL.]
Vice-President Nevada — Oregon Railroad Company.

The foregoing contract is hereby ratified by resolution of the board of Feb. 11th, 1881.

In witness whereof I have hereunto set my hand and affixed the corporate seal of the company this 12th day of February, A. D. 1881, at the office of the company, Reno, Nevada.

[SEAL.] (Signed) WM. C. STARR, *Secretary.*

EXHIBIT "E."

This indenture, made and entered into on this 26th day of April, A. D. 1881, between the *the* Nevada and Oregon Railroad Company, a corporation incorporated under an act of the Legislature of the
378 State of Nevada, entitled An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto, approved March 22, A. D. 1865, and the acts amendatory thereof and supplementary thereto, on, to wit, the 1st day of June, A. D. 1880, party of the first part, and the Nevada and Oregon Railroad Company, a corporation formed and organized on the 25th day of April, A. D. 1881, under the above-entitled act and the acts amendatory thereof and supplementary thereto, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of divers other good and valuable considerations it thereunto moving, has granted, bargained, sold, aliened, assigned, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part and to its successors and assigns forever all the following property, franchises, and estate, real and personal, now constructed, purchased, acquired, held in possession, or owned by it, said party of the first part, to wit: All the railroad line of the said party of the first part, commencing at or near the town of Aurora, in the State of Nevada, and running thence to a point in the State of California at or near the boundary line be-
379 tween said State of California and the State of Oregon, and where said boundary line between said States intersects the western shore of Goose Lake, and extending through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties — Sierra, Lassen, and Modoc, in the State of California, a distance of three hundred miles, as near as may be, including all the lands and estate, real and personal, rights of way, roadway, track and tracks, together with all the superstructures, tools, maps, and profiles of said line, field-notes of survey thereof, contracts, choses in action, and all other property held or owned by said party of the first part pertaining to said railroad, and all the corporate rights, privileges, and franchises of said party of the first part pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interest, estate, property, possession, claim, and demand in law or in equity of the said party of the first part of, in, and to the same or any part or parcel thereof; to have and to hold the above granted and described premises, estate, property, and franchises, with the appurtenances, unto
380 the said party of the second part and to its successors and assigns forever.

In witness whereof the said party of the first part has hereunto affixed its corporate seal and caused these presents to be attested by its president and secretary the day and year first above written.

[SEAL.] THE NEVADA AND OREGON RAILROAD COMPANY,
By GEO. L. WOODS, *President.*
S. C. SCOVILLE, *Secretary.*

STATE OF NEVADA, }
County of Washoe, } ss:

On the twenty-seventh day of April, A. D. one thousand eight hundred and eighty-one, personally appeared before me, H. L. Fish, a notary public in and for the county of Washoe and State of Nevada, Geo. L. Woods, president, and S. C. Scoville, secretary of the Nevada and Oregon Railroad Company, a corporation incorporated, to wit, on the 1st day of June, 1880, to me personally known to be the persons whose names are subscribed to the foregoing instrument as the president and secretary of said company, who each acknowledged to me that he executed the same in his official capacity, for and on behalf and in the name of said company, as its free and voluntary act and deed for the uses and purposes therein mentioned, and in pursuance of a resolution of the board of directors of said company directing such deed to be executed, by signing the same
381 as president and secretary and affixing thereto its corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] H. L. FISH,
Notary Public.

Recorded at request of S. C. Scoville. Filed April 28th, A. D. 1881, at 40 min. past 3 p. m.

JNO. B. WILLIAMS,
County Recorder.

STATE OF NEVADA, }
County of Washoe, } ss:

I, John B. Williams, county recorder in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of the record of the original deed from the Nevada and Oregon Railroad Company, a corporation, to the Nevada and Oregon Railroad Company, a corporation, as the same appears on pages 211–'12, in volume 9 of Deeds, records of said county, now in my charge.

Witness my hand and official seal, at Reno, in said county, this 16 day of September, A. D. 1881.

[SEAL.] JNO. B. WILLIAMS,
County Recorder.

EXHIBIT "F."

This agreement, made and entered into this 26th day of April, A. D. 1881, between the Nevada and Oregon Railroad Com-
382 pany, a corporation organized under the laws of the State of Nevada, on the 25th day of April, A. D. 1881, party of the first part, and Thomas Moore, of the city of Elizabeth, State of New Jersey, party of the second part.

Whereas the Nevada and Oregon Railroad Company, a corporation organized under the laws of the State of Nevada, on, to wit, the 1st day of June, A. D. 1880, and said Thomas Moore have heretofore entered into certain contracts whereby the said Moore, in consideration of certain covenants and promises on the part of said last-named corporation in said contract expressed and contained, covenanted and agreed with said last-named corporation to build and equip, as in said contracts provided, a certain railroad and the several sections thereof in said contracts described; and

Whereas the said last-named corporation has sold and assigned to the party hereto of the first part all its corporate rights, privileges, and franchises, rights of way and estate, and all its property, real and personal, of whatsoever nature or description, and choses in action, including said contracts:

Now, therefore, this agreement witnesseth:

That the parties hereto, for and in consideration of the sum of one dollar, lawful money of the United States, by each to the other paid, the receipt whereof is hereby acknowledged, do mutually promise, covenant, and agree, the one with the other, to adopt
383 each and all of said contracts as contracts between the party hereto of the first part and the party hereto of the second part, it being mutually agreed and understood by and between the parties hereto that the party hereto of the first part shall be bound to the party hereto of the second part to keep and perform all the covenants and agreements in said contracts expressed on the part and behalf of the said The Nevada and Oregon Railroad Company; a corporation incorporated on, to wit, the 1st day of June, A. D. 1880, and that the said Moore, the party of the second part, shall be bound to the party of the first part to keep and perform all the provisions and covenants in said contracts expressed to be kept and performed by and on the part of the said Moore, as fully to all intents and purposes as though each and all of said contracts were originally made and entered into between the parties hereto.

In witness whereof the party of the first part has hereunto affixed its corporate seal and caused these presents to be attested by its president and secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written.

[CORPORATE SEAL.] NEVADA AND OREGON RAILROAD COMPANY,

(Signed by) GEO. L. WOODS, *President.*

(Signed by) S. C. SCOVILLE, *Secretary.*

(Signed) THOMAS MOORE. [SEAL.]

384 EXHIBIT "G."

Articles of agreement, made and entered into this twenty-fourth day of May, in the year of our Lord eighteen hundred and eighty-one, between Thomas Moore, of Elizabeth, New Jersey, party of the first part, and the Nevada and Oregon Railroad Company, of the State of Nevada, party of the second part, witnesseth:

That whereas the Nevada and Oregon Railroad Company, incorporated June 1st, 1880, did, on the 4th day of December, A. D. 1880, enter into a contract with said Thomas Moore for the construction and equipment of 170 miles, more or less, of the Reno Division, from near Beckwith Pass to the Oregon line; and whereas said company has, by deed, conveyed all its property, rights, and contracts to the Nevada and Oregon Railroad Company, incorporated April 25th, A. D. 1881; and whereas said latter-named company has assumed all contracts of the Nevada and Oregon Railroad Company; and whereas unforeseen and unavoidable delays have occurred, rendering it impossible to commence the contemplated work as soon as expected:

Now, therefore, in consideration of the above and of the sum of one dollar paid to each party by the other, the receipt of which is hereby severally acknowledged, it is hereby agreed between the parties hereto that the aforesaid contract shall be extended in full in all respects for the term of one year.

385 In witness whereof the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these presents to be signed by the president and secretary, thereunto duly authorized by resolution — its board of directors, and its seal to be attached this twenty-fourth day of May, A. D. 1881, at Reno, Nevada.

(Signed) THOMAS MOORE. [SEAL.]
[CORPORATE SEAL.] NEVADA AND OREGON RAILROAD COMPANY,
(Signed) By GEO. L. WOODS, *President.*
(Signed) S. C. SCOVILLE, *Secretary.*

STATE OF NEVADA, }
County of Washoe, } *ss:*

On the 30th day of May, A. D. one thousand eight hundred and eighty-one, before me, R. S. Osburn, county clerk and *ex officio* clerk of the second judicial district court in and for said county of Washoe, personally appeared Geo. L. Woods, president, and S. C. Scoville, secretary of the Nevada and Oregon Railroad Company, a corporation, personally known to me to be the individuals described in and who, as president and secretary, respectively, and in the name of the said Nevada and Oregon Railroad Company, executed the annexed instrument as the party of the second part thereto, and they and each of them duly acknowledged to me that they, as the president and secretary of said company, executed the same freely and vol-

386 untarily as and for the act and deed of the said Nevada and Oregon Railroad Company and for the uses and purposes

therein mentioned; and on the said 30th day of May, A. D. 1881, also personally appeared before me, R. S. Osburn, county clerk and *ex officio* clerk of said second judicial district court in and for said Washoe county, Thomas Moore, personally known to me to be the individual described in and who executed the said annexed instrument as the party of the first part thereto, and he acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of said district court the day and year hereinbefore written.

[SEAL.] (Signed) R. S. OSBURN, *Clerk*,
(Signed) By W. L. KNOX, *Deputy*.

EXHIBIT "H."

Series A. Reno Division.

First Division, Reno to Beckwith Pass. Nevada and Oregon Railroad Co. Capital stock, $6,000,000; $100 per share. Location, north from Reno via Long Valley, Madeline Plains, Pitt river, and Goose Lake to Oregon.

This certifies that —— —— has this — day of ——, 1880,
387 subscribed for — shares of the capital stock of the Nevada and Oregon Railroad Company, and agrees to pay such subscription as follows: Twenty per cent. on the tenth day of January, A. D. 1881, and ten per cent. per month thereafter until fully paid, with the privilege of making full payment at any time, and when fully paid the subscriber shall receive his proper stock certificate.

Dated —— —, 1880.

NEVADA AND OREGON RAILROAD CO.,
By —— ——.

Nevada and Oregon Railroad Co. Capital stock, $6,000,000; $100 per share. Series A. Reno Division. First section, Reno to Beckwith Pass.

—— —— hereby subscribes for — shares of the capital stock of the Nevada and Oregon Railroad Company, and agrees to pay such subscription as follows: Twenty per cent. on the tenth day of January, A. D. 1881, and ten per cent. per month thereafter until fully paid, reserving the privilege of making full payment at any time.

Certificate.

I hereby certify that I have carefully compared the above and foregoing documents, Exhibits "A" to "H," inclusive, except Exhibits "E" and "H," with the originals, as recorded by the
388 county recorder of Washoe county, Nevada, in the record of bonds and agreements in said office, and that said exhibits, except "E" and "H," are true and correct copies of said instruments as recorded aforesaid. I further certify that no record in said

county recorder's office could be found after diligent search of Exhibits "E" and "H."

Sept. 26, 1883.

N. SODERBERG,
Special Examiner.

WILLIAM WEBSTER, called for complainants, sworn and examined.

Direct examination by Mr. CLARKE:

Question. Have you the bonds which were issued to you and which were mentioned in the testimony of Mr. Deal?

Answer. No, sir.

Q. What disposition have you made of them?

A. Those bonds I delivered to William Wright, in the valley out here, who is the executor of my father's estate, as security for moneys that I had from that estate. I owe the estate about two thousand dollars, for which it holds my note.

Q. Did the indebtedness exist at the time the bonds were delivered or before?

A. Existed before the delivery of the bonds. Some time in March the executor informed me that it was the desire of my mother
389 that I pay the note if convenient. I informed them I had the money, but did not wish to let the money go. I wanted to use it. Afterwards I received the bonds and passed over the bonds to the executor.

Q. How many bonds?

A. I passed over at that time 8 bonds.

Q. What were those bonds given to you for?

A. They were given to me for services rendered to the company, with the exception of $1,500 assumed by the company, due me from Moore.

Q. What was the account for which the retainer from Moore was due upon account of services?

A. It was for services rendered in the suit of Thomas Moore against the Nevada and Oregon Railroad Company, Wheeler, and others—the same action mentioned by Mr. Deal—and other suits we were retained in.

Q. Did it include compensation for your services in defending Moore in the case of the State against Moore?

A. No, sir; it did not. There was not any part of it for that case.

Cross-examination — WILLIAM WEBSTER by Mr. DEAL:

Question. Mr. Webster, when was it that the 8 bonds were transferred by you to Mr. Wright that you have mentioned?

390 A. They were transferred by me to Mr. Wright some time about the 1st of April, 1883.

Q. That was before this suit was brought?

A. Yes, sir.

Q. Had Mr. Wright any notice whatever of any contract between

Moore and the company or between the company and Moran Brothers of any nature or kind whatever?

A. None whatever; no, sir. I explained to him why I gave him the bonds. I told him if he wanted the money I would raise it, but that I rather desired not to pay it then.

Mr. CLARKE:

Q. There are 13 in all?
A. Yes, sir.
Q. They are held as security for an indebtedness of $2,000?
A. Yes, sir.

Mr. DEAL:

Q. The last 5 bonds were never received by you and were delivered to Mr. Wright by your direction?

A. Instructions were given to Mr. Balch, I believe, to send them to Mr. Wright by Wells, Fargo & Co., and they were received by him through Wells, Fargo and Company.

Q. Had you any knowledge of an agreement between the Moran Brothers and the Nevada and Oregon Railroad Company by the terms of which the company agreed with the Moran Brothers that they would not issue more than $10,000 bonds to the mile?

A. No notice of any such agreement. I don't know of the
391 existence of any such agreement or that any such agreement ever existed.

I have read over the foregoing pages of my testimony on direct and cross examination and corrected the same, and the testimony as so corrected by me is correct.

W. WEBSTER.

Subscribed in the presence of the special examiner and the counsel for the respective parties this 6th day of October, A. D. 1883.

N. SODERBERG,
Special Examiner.

W. E. F. DEAL, called for the complainants, sworn and examined.

Direct examination by Mr. CLARKE:

Question. Are you the W. E. F. Deal who is a party to this suit?
Answer. I am.

Q. How many, if any, of the bonds of the Nevada and Oregon Railroad Company do you hold?

A. I hold none, but Charles T. Bender holds one bond in trust for me in which I am interested to the extent of $562.50, I think, the amount stated in the answer.

Q. When did you acquire that interest and how?

A. At the time of the meeting of the board of trustees of the Nevada and Oregon Railroad Company I had presented a claim for legal services rendered to that company from about September 27,
392 1881, up to the date of that meeting, which I think was in January, 1883. I had had correspondence with Mr. Webster,

with whom I was associated in business for the company, and we had agreed what we would charge for our services, and at the meeting the board of trustees claimed that we had charged them too much, and they reduced my bill from either $4,500 or $5,500 to $3,500—that is, for my services rendered to the company—and I was notified by Mr. Balch, the president of the company, and it was my understanding at the time of that meeting held in January, 1883, that the company had agreed with Thomas Moore to assume and pay a part of a retainer due William Webster and myself for services we had rendered Moore in a case brought by Moore against Nevada and Oregon Railroad Company, E. D. Wheeler, Trenmor Coffin, and John Sunderland. It was the suit in which was involved the validity of the $50,000 shares of stock of the Nevada and Oregon Railroad Company which was decided in the circuit court of the United States, ninth circuit and district of Nevada. Mr. Webster and myself agreed to take the company'- — for that much of Moore's bill, refusing to receipt for any more, except upon account. $3,500 was due me from the company for services rendered to the company, and the balance, $2,500, was due Judge Webster and myself for services rendered Thomas Moore, which the company assumed for Moore. Of that I was entitled to $1,000 and Judge Webster
393 to $1,500. The company cut down the amount of the whole bill to $3,500 for what was due me by the company and the $1,000 of the amount due from Thomas Moore and assumed by the company, as I was notified, and I received of the first-mortgage bonds of the company the five bonds mentioned in the complaint in this suit and the fractional bond which is now held by Bender in trust for me. About the 30th of March of this year I transferred four of those bonds to Mrs. Catherine Winnie, one of the defendants, as security for money loaned, which I owe and which she holds to this day as security for that. That was quite a long time before these suits were instituted. The other bond which was issued to me I transferred to Homer S. King, in San Francisco, a broker there, as security for a promissory note of $1,000 which I owed him and which I still owe him and the bond he still holds. Mrs. Winnie also holds the four bonds which I delivered about the 3rd of March last as security for money loaned. When this action was commenced negotiations took place between the company—Nevada and Oregon Railroad Company—and Mr. Webster and myself with reference to attorney's fees for future services to be rendered that company, and we agreed with the company to render them our legal services in any business that they might have for a year from the adoption of the resolution that has been introduced in evidence. I think it was in April of this year, and those services were to include any services we might be required to
394 render in these cases—that is, in the present case of Moran Brothers against McMurray and others and the foreclosure suit brought by the Union Trust Company against the Nevada and Oregon Railroad Company—and we agreed for ten of those bonds; that we would give our services in any business the company might have for a year, and it was to include services rendered beyond a

year, provided this litigation should continue beyond the year. Of those ten bonds I was to receive five for my services and Judge Webster was to receive the other five. I have never received any of those five bonds, but I directed Mr. Balch to send two of those bonds to Judge Lewis and the other three bonds to George H. Dana. The bonds sent to Judge Lewis were sent to him in payment of money which I owe him upon partnership account, and the three bonds issued to George H. Dana were sent to him and received by him as security for a balance due on a note given in a stock transaction, upon which there was due at that time $4,500, and there is still due at least that amount. I think it is more than that. It is at least that amount. Judge Lewis and George H. Dana still hold those bonds.

Q. Recurring to the two bonds you have last mentioned, were they given in compensation of the services to be rendered by yourself and Judge Webster in this action?

A. They were to include that.

395 Q. Do they include payment for services rendered by yourself and Judge Webster for the several defendants other than the corporation?

A. We agreed to defend these suits so far as the other parties are concerned. I know nothing about that. My agreement, as far as I am concerned and so far as Judge Webster is concerned, was with the company. We agreed to defend these suits. Anybody who was interested in them we agreed to defend.

Q. So that the company pay you with ten bonds for whatever service you render for the several defendants?

A. And also including any litigation that might arise during the year and any advice we might render the company.

Q. Do you understand that the corporation as such has any defence or has any real interest in the defence, it being to determine, as between Moran Brothers and other bondholders, the right to participate in the fund?

A. As between Moran Brothers and the company, the company may not have any interest; but so far as I am concerned and Judge Webster the company is interested in paying our fees.

Q. But I speak of their interest between Moran Brothers and the company.

A. It may not, so far as that is concerned. I certainly would have refused to take employment in the case unless I made that as

396 a condition that they should issue these bonds before I would be employed. I think I wrote Mr. Webster and told him they must issue these bonds as we directed before we would be employed.

Q. What is the real interest of the company in this suit?

A. As between Moran Brothers and this company, I don't know that they have an interest.

Q. The road was not a party at the time you were employed. It was made so after your answer?

A. I believe so.

Q. When you made this contract with the company and took the

bonds had you notice of the several contracts between the Nevada and Oregon Railroad Company and Moore, the contractor constructing the road?

A. Certainly; so far as the contracts are concerned that were made between Moore and the old company and Moore and the present company, I had legal notice of *anything* contained in those contracts, but I never knew of any contract between the corporation defendant and Moran Brothers such as is alleged in the complaint in this action, nor have I to this day heard of any such contract. I never saw the contract Mr. Balch mentioned, made some time in 1882, in New York, with Thomas Moore, until after this action was brought, and never knew of its terms until after this suit was brought.

397 Q. You speak of that in the bill, which alleges an agreement on the part of the company not to issue more than $10,000?

A. Yes, sir; as a contract made between Moran Brothers and the corporation. And, as far as these parties are concerned to whom I have transferred these bonds, none of them had notice even of the contracts between Moore and the company. They did not either of them see the record. On the contrary, each and all of these parties were informed by me that it was my opinion that every bond issued to me was just as good as every bond issued to Mr. Moran or Moran Brothers.

Q. I wish you would state generally the character of services which yourself and Judge Webster rendered to the corporation defendant in payment of which the first bonds were issued to you?

A. The bonds were to represent the $3,500 which the company agreed to allow me, and for which they issued bonds to me, were for services rendered by me between September 27, 1881, and January, 1883. They consisted of professional services rendered to the company in its litigation and giving it advice. It is my opinion as a lawyer that if the company had paid me $5,000 for the services I rendered this company it would not have been more than a reasonable fee. They consisted in defending suits in which the com-

398 pany was a party and was involved and in advice to the company. I had knowledge of the fact that from September 27, 1881, down to the present time Judge Webster has been constantly in the employment of this company prosecuting its suits and defending suits and rendering advice to the company, and that if, instead of having bonds issued to him, he had received the cash their face represents I don't think he would have been overpaid at all for his services.

Q. Can you state that the bonds issued to him were issued under like circumstances and conditions as those issued to you?

A. I can state this, that at the time that I received the bonds for the $4,500 at 80 cents on the dollar that Judge Webster received bonds for his services, including $1,500 assumed by the company, as I was informed by Mr. Balch, due Mr. Webster on account of retainer by Thomas Moore and services rendered directly to the company—I think $6,500. I think he received altogether 8 bonds and a fraction of a bond, $125. I believe that $125 is in the hands of

Bender as trustee. Mr. Bender holds a number of bonds; they were all issued for $1,000 each, and he holds them for different parties owning fractions of them.

End of testimony of W. E. F. Deal.

I have read over and corrected the foregoing pages, being my direct examination, and the same as so corrected is true and correct.

W. E. F. DEAL.

399 The foregoing testimony of W. E. F. Deal, having been previously read over and corrected by him, was signed by him in my presence and in the presence of counsel for defendants, complainants' counsel not appearing, this 15th day of October, A. D. 1883, being a day regularly appointed by me, upon notice to both parties, for taking the testimony for defendants here.

N. SODERBERG,
Special Examiner.

RENO, *Oct.* 13, 1883.

A. H. MANNING, called for the complainants, was duly sworn, and testified as follows:

Direct examination by Mr. CLARKE:

Question. What is your name, age, and residence?

A. My name is A. H. Manning; age, 51; residence, Reno, Washoe Co., Nevada.

Q. What office do you hold in the Nevada and Oregon Railroad Company?

A. I am one of the directors of the railroad; also treasurer.

Q. How long have you been such director?

A. I think over two years.

Q. And how long treasurer?

A. The same length of time.

Q. Are you the A. H. Manning of the firm of Manning & Berry?

A. Yes, sir.

Q. Did you know Thomas Moore?

400 A. Yes, sir.

Q. Were you acquainted with him during the time he was contractor to *contract* the Oregon and Nevada road?

A. Yes, sir.

Q. Where was his headquarters and principal place of business during the time he was engaged in building the road?

A. Well, I don't know where his headquarters was principally.

Q. Where did he do his business? Did he not do his business at your store?

A. Not much of it. For a short time he did; he had done his business and trade with A. J. Clark for some time before he done his business with us.

Q. Did Moore do business with the firm of Manning and Berry?
A. Yes, sir.
Q. What was the character of the business?
A. Buying supplies for the railroad.
Q. What kind of supplies?
A. He bought powder, bought steel; he bought picks, shovels; he bought provisions.
Q. You knew Moore quite well?
A. Pretty well.
Q. Did you understand the relation he held, whether that of contractor or not, with Nevada and Oregon Railroad?
A. Whether he was a contractor—no; I did not. I did not know how he was building the road.
401 Q. You were a director of the road, were not you?
A. I was a short time before Moore left.
Q. You were a director during Moore's operations?
A. No; not entirely.
Q. Well, during a portion?
A. Yes, sir; a portion of the time. I think I was director from some time in the fall until January—before Christmas, before December.
Q. Did you have meetings of the board during that time?
A. Yes, sir; a few meetings.
Q. Was Moore present?
A. I don't think he was.
Q. Did he make any reports to the board?
A. No, sir; no reports.
Q. Did he have any transactions with the company before you as director?
A. Not while I was director.
Q. Do I understand you to say you did not know Moore was a contractor with the Nevada and Oregon Railroad Company?
A. No; I could not swear that I did.
Q. Didn't you hear it was so?
A. Yes, sir; common talk.
Q. Did you not hear Moore say so?
A. I might have heard Moore say so.
Q. You knew he was acting as such from what people said?
A. I knew he was boss of the construction of the road.
402 Q. Did you not sell him goods as contractor?
A. I sold goods to Thomas Moore.
Q. Certainly—as contractor?
A. As builder; I did not say he was contractor.
Q. Well, as builder?
A. Yes, sir.
Q. For what length of time did you sell him goods?
A. I think I commenced selling him goods in 1881.
Q. Just refresh your recollection, if you can.
A. June, 1881, up to the time and awhile after he left; he left the 16th of November, 1881.
Q. You continued to sell him goods after he left?

A. Yes, sir.
Q. What character of goods?
A. The same character I mentioned—powder, tools, and provisions; coal, stone coal.
Q. Tools to be used in the construction of the road?
A. Yes, sir.
Q. Supplies to feed his men?
A. Yes, sir.
Q. How did you charge those goods?
A. I charged them to Thomas Moore.
Q. About what amount of supplies did you furnish him?
A. The amount of—rising $15,000.
Q. When did Manning and Berry cease to do business?
A. The 25th of last January, I think it was.
Q. Did Moore ever settle with you for the goods?
A. No, sir.
403 Q. Did he ever settle in part with you for the goods furnished? I do not speak of the balance you have stated here.
A. He paid us some during the time we furnished.
Q. Was this $13,000 and odd dollars the balance?
A. Balance due.
Q. I asked you to state the amount approximately furnished to Moore at any time; you have stated the balance, it seems.
A. Well, it appears to me, as near as I can recollect, he paid us once $600, once a $1,000.
Q. Those payments, added to the sum you have named of 13,000 and odd dollars, would make the aggregate of the goods furnished?
A. Yes.
Q. 14,600 dollars in all; now, did the Nevada and Oregon Railroad Company at any time release Moore from his contract?
A. I don't know.
Q. Not to your knowledge?
A. I don't know that they did or that they did not.
Q. Well, as a member, as a trustee, or director of the road and its treasurer, you would be likely to know if it had occurred?
A. I know this, as a director, that they assume- Moore's indebtedness and took the contracts off his hands.
Q. Was that by formal resolution?
A. Well, I could not say.
404 Q. How do you know they assumed his indebtedness and took the contracts off his hands?
A. From the president, Balch.
Q. You do not know it otherwise than from Balch?
A. No; I do not. If it is on resolution I do not know.
Q. Manning and Berry had at one time twenty-eight bonds, if I understand it, Mr. Manning?
A. No.
Q. How many?
A. The account was signed over to C. T. Bender, and he got them.
Q. What account was assigned?

A. These accounts against the Nevada and Oregon Railroad Company.

Q. Had you any account against the Nevada and Oregon Railroad Company other than your account against Moore?

A. Yes, sir.

Q. What was that for?

A. That was—some of it was for supplies that the company bought that was not charged to Moore; but the largest part of it was a judgment that we paid that Hatch had against the company and a judgment that Phi Bates had against—I don't know whether his was against Thomas Moore or the company.

Q. What was the claim of Manning and Berry against the Nevada and Oregon Railroad Company for—supplies or anything
405 furnished by Manning and Berry to the railroad company?

A. (No answer.)

Q. State the several demands to secure which the bonds were delivered to C. T. Bender as trustee.

A. Well, there was $1,627.05 for supplies for the company directly; there was $5,000, and fifty dollars interest paid to Hatch on Hatche's judgment against the company; there was 2,400 dollars for lease of rolling stock; there — $840.15 costs paid in the Hatch case, Hatch judgment; $832.73 paid Phi Bates judgment; there was $11,963.70 on a judgment we had against Thomas Moore. This $11,963.70 is a balance due Manning and Berry from Moore after deducting the amount realized on the sale of the rolling stock, locomotive, and cars.

Q. That makes the aggregate $22,810.90. When were the supplies furnished for which you make the charge of $1,625.75?

A. The most of them was furnished after Mr. Moore left and Mr. Balch took charge of the road.

Q. What was the character of these supplies?

A. The character was provisions and picks and blacksmithing. We paid their blacksmith bills.

Q. Supplies used in the construction of the road?

A. Yes, sir.

Q. Was the company then and by itself engaged in constructing the road?

A. Yes, sir.

Q. It had no contractor?

A. No contractor at that time.

406 Q. Are these supplies charged at the current market prices?

A. Yes, sir.

Q. Any payments made on the account of $1,622.75?

A. I don't think there was any payment made on that.

Q. The next item is 5,050 dollars, paid to Hatch?

A. Yes, sir.

Q. A. J. Hatch? What was Hatch's claim upon which that payment was made?

A. It was a judgment against the N. & O. R. R. Co.

Q. Is that judgment here recovered against the company for a claim which he asserted against the old corporation?

A. I don't know whether it was against the old or new or against both of them.

Q. He brought that suit, don't you remember, Mr. Manning, for services, &c., rendered before the present incorporation?

A. No; I know he brought the suit for services as surveyor, but I did not know whether it was against the new or old incorporation.

Q. Don't you remember the litigation which occurred between Hatch and the present incorporation? Didn't you testify on the trial? Were you not a director at the time the suit was commenced and tried? You were a director and treasurer?

A. Yes, sir; but I was no witness in the case.

Q. Don't you remember that the company defended that suit, denying its liability?

407 A. I knew that they denied their liability, or a portion of it. I don't know that they did all of it.

Q. How did Manning and Berry come to pay the 5,050 dollars?

A. Hatch got an attachment against Moore or against the company, and he attached the rolling stock and all the property that he could find—the maps, the rolling stock, and the tools—everything except the road and the road-bed; and we went on the bond—Manning and Berry—and released that property, as we supposed at the time, just merely to release the property, not to assume the liability for the judgment, which we found out afterwards we had assumed. That is the way we become involved.

Q. Did that rolling stock belong to the company or Moore?

A. I don't know who it belonged to at that time.

Q. Moore claimed it, didn't he?

A. Moore claimed it.

Q. This 5,050 dollars was part only?

A. The notes were given payable at different times, and that was the first note that became due.

Q. Do you remember the date of this payment of 5,050 dollars, or about the date of it?

A. I think it became due in December, 1882.

Q. And was it paid about that time?

A. It was paid at the time that it became due.

Q. The next item is $2,400 for lease of rolling stock?

A. Yes, sir.

408 Q. Is that the same rolling stock which Hatch had attached and which was released to Moore upon your bond?

A. I think that a portion of it was. I don't know that it all was.

Q. Do you know that there was any rolling stock other or in addition to that which Hatch had attached?

A. No, sir.

Q. How did you acquire that rolling stock and the right to lease it?

A. We attached it as Moore's property after Moore had left.

Q. For this demand, which you have stated here, of about $13,000?

A. Yes, sir.

Q. It was in that case?

A. Yes, sir; that note became due September first, 1882.
Q. Then, if I understand you, for your demand the one that is embraced in this account——
A. (Interrupting.) That balance of $13,000.
Q. Against Moore you attached the rolling stock?
A. Yes, sir.
Q. As Moore's property?
A. As Moore's property.
Q. Did you sell it on your judgment?
A. I did.
Q. Bid it in?
A. Yes, sir.
409 Q. And it was after you had purchased it that you leased it?
A. Yes, sir; it was after we purchased we leased it.
Q. What sum did you bid for it?
A. 3,000 dollars.
Q. For what length of time did you lease it to the company for 2,400 dollars?
A. We leased it by the day.
Q. How much?
A. 10 dollars.
Q. If I understand, then, this $11,963.70 balance of the Moore account you have in judgment against Moore?
A. Yes, sir; it was in judgment against Moore.
Q. And is in judgment now?
A. The judgment has never been cancelled, I guess.
Q. That was Moore's debt for the supplies you had furnished, as you have stated?
A. That was charged to Moore.
Q. These bonds were given to secure that in part?
A. That, among other demands.
Q. That is one of the demands, as I understand you, which the company assumed?
A. Yes.
Q. Were you a director at the time?
A. Yes, sir.
Q. Were you present at the meeting?
A. Yes, sir.
Q. Did you act as a director?
A. Yes.
410 Q. The next item is $840.15 costs, paid in the Hatch judgment. What judgment was that? In the case of Hatch against the Oregon and Nevada Railroad Company?
A. Yes, sir.
Q. Did not Hatch have a suit against yourself and Berry on that release bond?
A. He had no suit. He attached our property—not any suit that we defended.
Q. He did sue you and attach your property?
A. Yes, sir.
Q. I ask you if this $840.15 costs includes the costs of that attachment?

A. I think it does.

Q. The next item is Bates' judgment of $832.73; was that a judgment — the company or against Moore?

A. That was against Thomas Moore.

Q. Bates had performed some services?

A. No, sir; he performed the services for the company. He was in the surveying party, and, as I always understood, the surveying was a part of the company's work to do, but he charged it against Moore. He said he would not look to the company, and he sued Moore and got a judgment.

Q. And that judgment against Moore is represented by this $832.73?

A. Yes, sir.

Q. That is one of the demands also which the company assumed?

411 A. Yes, sir.

Q. Now, in addition to these 28 bonds, I call your attention to 33 more, in all 61, which seem to have been issued and delivered at the same time.

A. Yes, sir.

Q. Upon what authority were those bonds issued and delivered?

A. They were issued by authority of the board of the Nevada and Oregon Railroad Company's directors.

Q. Who were the directors at that time?

A. There was Mr. C. A. Bragg, who has testified here as a witness; W. F. Berry, of Manning & Berry; A. H. Manning, D. W. Balch, and George A. King.

A. These constituted the directors and officers of the company at that time?

A. Yes, sir.

Q. They were all present and acting, I presume?

A. I believe we were all present.

Q. And acting in the matter?

A. Yes, sir.

Q. Where was Moore at the time this meeting was held the 31st of January, 1883?

A. I don't know.

Q. He was not in this country?

A. No.

Q. He was not present at that meeting?

A. He was not present at that meeting.

Q. When did you last see Moore here?

412 A. I think it was in Dec., 1881.

Q. He had been absent something more than a year?

A. Yes, sir.

Q. Was he at that time engaged in fulfilling any contract of construction with the company, in January, 1883?

A. No, sir.

Q. Had not been for something over a year?

A. Had not been for something over a year.

Q. The company had been itself constructing the road for itself

under the general management of the directors and Mr. Balch, I believe.

A. Yes, sir.

Q. Was McMurray at that meeting, the 31st of January?

A. No, sir.

Q. Was anybody there to represent him?

A. Mr. Balch represented Mr. McMurray.

Q. Was any member of the Washoe Mill and Lumber Company present?

A. Mr. C. A. Bragg was present.

Q. He was a member of that company?

A. I think he was.

Q. He was also a trustee?

A. Yes, sir.

Q. Was J. Schooling there?

A. I don't think J. Schooling was there.

Q. Mr. Chamberlain?

A. No, sir.

Q. Lonkey and Smith, or either of them?

A. Mr. Smith was there, I think.

413 Q. Mr. Deal?

A. Yes; Mr. Deal.

Q. Mr. Webster?

A. Mr. Webster.

Q. David Evans?

A. No, sir.

Q. A. Fraser?

A. I don't think Fraser was there.

Q. Clayton Belknap?

A. No, sir.

Q. Do you know what this claim of Clayton Belknap of $350 was for?

A. Well, I don't know, only that I was informed it was for legal services for the company, but what cases it was in I don't know.

Q. Not services as an attorney? You do not mean that?

Mr. DEAL: He was special examiner in the case of Moore against the Nevada and Oregon Railroad, and Judge Sabin refused to allow that item of the cost bill on the ground that it was costs of the company and the company had to pay it.

End of direct examination.

Cross-examination of A. H. MANNING by Mr. DEAL:

Q. Upon what representation or inducements held out to you by the Nevada and Oregon Railroad Company and its trustees

414 did you give credit to Thomas Moore for the supplies for which you obtained a judgment of 13,000 and odd dollars, against Moore, which you have mentioned?

Objected to by complainants as incompetent and immaterial.

A. We give Thomas Moore credit upon the representations of John Sunderland and A. J. Hatch. John Sunderland was director of the railroad company. He assured me that the company was on good financial basis; that I need not be afraid to give Thomas Moore credit or the company credit for whatever they wanted. Hatch, I think, was president and director; his assurance was to Mr. Berry. I don't know what it was. I had theretofore refused Mr. Moore credit. I then went to him and told him I would like to furnish him supplies for the road. He said he was trading with Mr. Clark then, but that he would make a change, and he afterwards came to me and asked me if I wanted to supply him, and I told him I did.

The attorney for complainants made a motion to strike out the answer of the witness upon the grounds that it is not shown that Sunderland had any authority to make these representations for the company, nor is it shown that these representations were ever brought to the attention of the company or ratified. Furthermore, the representations are all merely — and without any consideration.

Mr. DEAL:

415 Q. Was not John Sunderland the treasurer and financial agent of the company?

A. He was.

Q. Was not A. J. Hatch the active executive officer of the company and had charge of the matter of construction?

—. ——.

Q. Would you have given credit to Thomas Moore but for the representation made by the directors of the company?

A. No, sir; had refused them before.

Q. Were those representations true?

A. No, sir.

Q. As a matter of fact, was not the company, as you ascertained afterwards, after you had given the credit, without any financial standing?

A. Yes, sir; they were.

Q. Your firm of Manning and Berry became embarrassed in consequence of the credit given Thomas Moore, and in consequence of that embarrassment your firm had to fail.

A. The credit given to Thomas Moore and this judgment against the company is what embarrassed us.

Q. You had given More credit for this sum of money, and you had also been attached in consequence of having become surety on the attachment in the case of Hatch — The Nevada and Oregon Railroad Company. That was the direct cause?

A. That was the direct cause.

Q. When was it you made an assignment to Bender?

A. The 25th of January, 1883.

Q. Did that assignment carry with it all these claims you have mentioned, amounting to $22,810.90?

416 A. Yes.

Q. At the time that the company issued these bonds to Charles T. Bender, your assignee, did you or your firm have any interest of any nature or kind whatsoever in those claims?

A. No, sir.

Q. Was the assignment made to Bender an absolute assignment?

A. Yes, sir.

Q. Did you or your firm have any interest whatever in any event in any of these bonds or anything that might be derived from them?

A. No, sir.

Q. You delivered these bonds to Bender, your assignee, as treasurer of the company?

A. Yes, sir.

Q. And you also delivered the other 33 bonds, making 61 in all?

A. They were delivered on the 31st of January or the first day of February.

Q. Now, I understand as to this undertaking upon which Manning and Berry were sureties it was given to release an attachment issued against the Nevada and Oregon railroad in the case of A. J. Hatch against The Nevada and Oregon Railroad?

A. Yes, sir.

Q. In that case the judgment was against the company?

A. The judgment was against the company.

Q. And then Hatch, the judgment creditor, commenced
417 suit against Manning and Berry and Bragg to recover upon the bond given to release the attachment, and in order to recover judgment against you, and in order to settle that judgment you gave the notes of the firm, and your firm paid the first of these notes, amounting to $5,050?

—. ——.

Q. A judgment had been recovered against you for this sum; do you remember the whole amount?

A. The whole amount over and above this $5,050?

Q. No; including it?

A. No; I don't remember; something over $16,000.

Q. You say with reference to the Bates judgment that Moore claimed that the company was in fact liable for that amount; it was the company's indebtedness?

A. Yes, sir.

Q. Did not the company admit that?

A. The company did admit that.

Q. Did not Moore make his defence that he did not do it, but the company owed it?

A. Yes, sir.

Q. Bates went to work for the company, but would not charge his account to the company, but charged to Moore; that is why he went against Moore?

A. Yes, sir.

End of cross-examination.

Redirect examination of A. H. MANNING by Mr. CLARKE:

Question. How and for what purpose were your demands
418 against Moore and the Nevada and Oregon railroad assigned to C. T. Bender?

A. To secure demands that C. T. Bender had against us or the bank had against us.

Q. They were, then, assigned as security?

A. Yes, sir.

Q. What was the indebtedness of Manning and Berry to C. T. Bender approximately?

A. I think it was in the neighborhood of $20,000.

Q. Had the bank any other security?

A. Yes, sir.

Q. What?

A. Had our book accounts.

Q. About how much—about what amount of solvent debts?

A. That I could not say.

Q. Come within $10,000 of it?

A. $25,000; supposed to be solvent.

Q. Did they have anything else besides those books and accounts—any notes?

A. Had no notes.

Q. Did not they have the note of Manning and Berry? Did not they have your promise?

A. They had our obligations.

Q. Has he those books yet?

A. No, sir; we have them now.

Q. Have you settled your obligation with the bank? Have Manning and Berry settled it?

A. Yes, sir.

419 Q. How?

A. By collection.

Q. Then you are no longer indebted to C. T. Bender?

A. No, sir.

Q. You have made collections and discharged your obligations?

A. Yes, sir.

Q. What has become of the bonds?

A. I have not seen the bonds.

Q. What right has Bender to them now?

A. He claims the right. They have never been surrendered.

Q. The obligations to secure which they were left with him has been paid?

A. Yes, sir.

End of testimony of A. H. Manning.

I have carefully read over the foregoing pages of my testimony, being my direct, cross, and redirect examination, and corrected the same, and the same is correct.

A. H. MANNING.

Subscribed before me, in the presence of the attorneys for the respective parties, this 29th day of October, 1883.

N. SODERBERG,
Special Examiner.

The foregoing 253 pages contain all the evidence produced before me on the part of complainants in said cause. Each witness, before giving testimony, was solemnly sworn by me to testify to the truth, the whole truth, and nothing but the truth in said cause.
420 Each witness, before subscribing his deposition herein, was by me requested to and did carefully read over and correct said deposition.

Respectfully submitted,

N. SODERBERG,
Special Examiner.

Dated Nov. 2, 1883.

421 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES MORAN *et als.*, Complainant-,
vs.
H. J. MCMURRAY *et als.*, Defendants.

Testimony for defendants taken before N. Soderberg, special examiner. Published by order of court. Filed Nov. 19, 1883. T. J. Edwards, clerk.

CARSON CITY, *Nov.* 12, 1883.

To the honorable the judges of the circuit court of the United States, ninth circuit and district of Nevada:

I have the honor herewith to submit a full and correct report of the evidence on behalf of defendants in said cause, taken before me and by me as special examiner for defendants, at Reno, Nevada, October 15, 22, and 29, 1883.

N. SODERBERG,
Special Examiner.

422 LAW OFFICE OF WM. WEBSTER, ESQ.,
RENO, NEVADA, *October 15th*, 1883, at 1.50 p. m.

Defendants, with their witnesses, appeared before the special examiner pursuant to notice. Complainants failed to appear until late in the afternoon.

Mr. Deal said: I would like to have the special examiner make a note of the fact that we met here at the time and place of which you have notified General Clarke to take testimony, and that the attorneys for defendants appeared and waited until 10 minutes to two o'clock.

E. R. SMITH, called for defendants, was sworn, and testified as follows:

Direct examination by Mr. DEAL:

Question. What is your name, age, and place of residence?

Answer. My name is E. R. Smith; am 36 years old, and I live in Virginia City, Nevada.

Q. Are you a member of the firm doing business in the name of Lonkey & Smith?

A. Yes, sir.

Q. How long have you been a member of that firm?

A. About 12 years.

Q. What business is that firm engaged in?

A. Lumber business.

Q. Did you sell any lumber — bridge timber—your firm—to the Nevada and Oregon Railroad Company?

A. Yes, sir.

423 Q. When was that? I am speaking now of material for which your firm received bonds.

A. About June 5, 1882.

Q. For what purpose did they buy the lumber and bridge timbers from you?

A. Well, for the purpose of building the Nevada and Oregon railroad.

Q. From Reno north on this Reno Division?

A. From Reno north on this Reno Division, about in the neighborhood of 35 miles — here.

Q. From Reno north?

A. Northerly direction.

Q. What was the amount of the bill?

A. $3,240.

Q. Was that lumber and those bridge timbers actually used in the construction of that road?

A. Yes, sir.

Q. Did your firm or any assignors of your firm furnish any other lumber or material for building that road?

A. There was a claim assigned to us from Condon and McIntosh of $224.79.

Q. For a valuable consideration?

A. Yes, sir.

Q. Was that for lumber?

A. That was for material furnished the Nevada and Oregon; I don't know the items exactly.

Q. Has your firm ever been paid the bill of $3,240?

A. Never received anything.

424 Q. Have not you received some bonds?

A. Yes, sir; we did; we took bonds for it.

Q. And for the bill assigned by Condon & McIntosh?

A. Yes.

Q. For how many cents on the dollar were they issued?

A. Eighty cents.

Q. When did your firm receive those bonds; how many bonds were there first?

A. Four bonds and a fraction of a bond. The fraction of a bond is held by the First National Bank or Charles T. Bender.

Q. Can you tell what date it was your firm received those bonds?

A. I think it was about the first of February, 1883.

Q. Were those bonds first-mortgage bonds described in the complaint in this action?

A. Yes, sir. The president said that they were bonds that were issued and stood the same as the bonds that were given to the Moran Brothers in New York—the same issue of bonds as those given to Moran Brothers in New York.

Q. Has your firm still those bonds?

A. We still hold the bonds; yes, sir.

Q. Did you or Mr. Lonkey ever have any notice or know anything of the terms of any of the contracts made between Thomas Moore and the Nevada and Oregon railroad under which he agreed to construct this railroad?

425 A. Well, we did—yes; we had notice—yes.

Q. What notice did you have? Did you know the terms of the contracts under which he constructed the road? Did you ever see the contracts?

A. Well——

Q. I am speaking of the contracts between Moore and the railroad company under which he was to build the road. Did you have any notice of the terms of any of those contracts?

A. I don't know; I don't remember now. We did have some notice, I think, of the contracts, but I don't remember exactly what they were.

Q. Did you at the time that you received these bonds know what the terms of the contract were between Moore and Nevada and Oregon Railroad Company?

A. Yes, sir; the contract was that Moran would pay so much——

Q. (Interrupting). I am speaking of the contract between Thomas Moore and the railroad company.

A. No; I never did.

Q. Did you ever know anything about the terms of the contracts between Moore and the railroad company?

A. Never did.

Q. Did you understand me as referring to the Moran Brothers when I first spoke of contracts?

426 A. Yes, sir; when you first spoke I thought you meant Moran Brothers. I never saw the contracts.

Q. Did you ever know anything of the contracts between Thomas Moore and the railroad company?

A. No.

Q. What contract were you speaking of?

A. Well, I had a general idea that the Moran Brothers was to advance so much money to the building of the road.

Q. The amount of $3,240 mentioned as the price of the ties and bridge timbers, was that the full price or a balance due?

A. Balance; there was some $2,000 paid, I think.

Q. Mr. Smith, just examine that paper which I show you and state what that is.

A. This is a contract or agreement that we made with the N. & O. R. R. Co. on the 5th of June, 1882, for the sale of these ties and timbers.

Contract offered and admitted in evidence, marked Defendants' Exhibit "A."

The following is Defendants' Exhibit "A:"

This agreement, made and entered into, in duplicate, this fifth day of June, A. D. 1882, by and between O. Lonkey and E. R. Smith, copartners in buying, selling, and manufacturing lumber under the firm name and style of Lonkey & Smith, parties of the first part, and the Nevada and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the
427 State of Nevada in such case made and provided, by and through its president and secretary, thereunto duly authorized by order of its board of trustees or directors, duly entered on its minutes on the 5th day of June, 1882, the party of the second part, witnesseth:

That the parties of the first part agree and bind themselves to bargain and sell to the 2nd party all the ties and bridge timbers now situate along the line of said second parties' railroad—a portion at Reno, Nevada, a portion at the summit, and a portion at the end of where the rails are now laid in place along said railroad, about 17 miles northerly and westerly from said town of Reno—all said timbers and ties being situate on or near the right of way of the 2nd party for its railroad and within the boundaries of Washoe county, said bridge timbers and ties being the same sold to the first parties by C. A. Bragg & Co., of Reno, Nevada; and said first parties agree to sell said timbers and ties and all thereof to the second party in consideration of the sum of five thousand dollars ($5,000.00), in United States gold coin to be paid, and when the same is fully paid, as hereinafter stated.

And the first parties agree that the second party may at once or as fast as needed take into its custody temporarily the said ties and bridge timbers and put them in place along its railroad
428 temporarily until paid for, or if not paid for until the 2nd party makes default in paying any instalment of said sum hereinafter agreed by it to be paid to the first parties or to their order, and that said 2nd party, until such default in payment as aforesaid shall be made, may use such ties and timbers in the construction and running of its road; but it is hereby distinctly understood and agreed that the title to such timber and ties shall remain in the first parties and not vest in the second party until each and every instalment, with interest thereon as herein agreed, shall first have been fully paid to the first parties, their heirs or assigns.

In consideration of this agreement and its due performance, the second party agrees and covenants that it will, with all due and reasonable diligence, prosecute the laying of its railway track and

the due equipment thereof, and that on completion of the construction of its track and laying the iron thereon to a point along said track (21) twenty-one miles from the town of Reno, which it agrees to do on or before the 25th day of June, 1882, it will pay to the first parties or order five hundred dollars in U. S. gold coin within ten days thereafter, and on the completion of the 23rd, 25th, 27th, and 29th miles of its said track northerly from Reno it will pay, within ten days after the completion of each said space of two miles, the further sum of five hundred
429 dollars to the first parties or to their order, and on the completion of the (31st) thirty-first mile of its said track northerly from Reno said 2nd party will pay to the first parties or order the further sum of twenty-five hundred dollars, making the full sum of five thousand dollars aforesaid, within ten days after the completion of said 31st mile. Said road shall be deemed complete within the meaning of this contract whenever the iron or steel rails are in place on said 31 miles of track so cars or locomotives can pass over the same. In default of the second party paying any instalment when due by the terms of this contract it agrees to pay interest thereon from date of said instalment falling due till paid at the rate of ten-twelfths of one per cent. per month, and upon default in payment of any one or more instalments by the 2nd party said first parties, their heirs, personal representatives, or the surviving partner of the first parties, may take up said timbers or ties, though put in place, on or along said road, and the 2nd parties in such case agree to transport all said timbers or ties without charge to the first parties at Reno, Nevada, or, in case the said 2nd party is not running its rolling stock on said road at the time, to allow it to be used by the first parties to transport said timbers and ties to said Reno free, and in case of any litigation becoming necessary to re-
430 cover said timber and ties or any instalment or instalments by the 2nd party herein agreed to be paid, then the first party may recover reasonable counsel fees expended or incurred by the first parties in such litigation.

That in default of any such payments by the 2nd party, as above provided to be made, that the first parties, their agents, servants, or employees, may, without liability for trespass or damage, enter upon any right of way or premises of the 2nd party and retake the possession, custody, and control of said timber and ties and remove the same without let or hindrance from the party of the second part, its officers, agents, servants, or employees.

And it is hereby agreed that on full payment of each and all instalments and interest as aforesaid said property shall then, and only then, vest in the second party or its successors in interest, and that this is to be considered a sale only upon condition of the full payment of each and all said instalments and interest thereon, as above provided, and that said timber and ties and none of them shall be subject to any attachments against or liens or mortgages upon the property of the 2nd party or subject to any liability or liabilities of the second party whatsoever at any time until full payment therefor, as herein agreed, shall first have been made.

431 In witness whereof the parties of the first and second parts hereto set their hands the day and year first above written.

OLIVER LONKEY.
E. R. SMITH.
NEVADA & OREGON RAILWAY CO.,
By D. W. BALCH, *President.*
GEO. A. KING, *Secretary.*

Q. Was that contract fulfilled by the Nevada and Oregon Railroad Company?

A. No; they paid a portion of it, $2,000, leaving the balance of $3,240, principal and interest.

Q. You afterwards accepted these bonds, & I suppose that terminated that contract?

A. Yes, sir; we took the bonds in payment of the bill, supposing the bonds to be equal to the other first-mortgage bonds. That is the way it was represented to us.

End of direct examination. No cross-examination.

I have read over the foregoing pages, being my direct testimony, had an opportunity to correct the same, and the same is correct.

E. R. SMITH.

Subscribed before me in the presence of the attorneys for the respective parties this 15th day of October, A. D. 1883.

N. SODERBERG,
Special Examiner.

432 C. A. BRAGG, called for defendants, having been duly sworn, testified as follows:

Direct examination by Mr. DEAL:

Q. What is your name, age, and residence?

A. Name, C. A. Bragg; age, 64 years old; I reside in Reno.

Q. Did you know the Washoe Mill Lumber Company?

A. I did.

Q. What business was that company engaged in here?

A. Selling lumber; buying and selling lumber.

Q. Did you know the Nevada Lumber Company?

A. Yes, sir.

Q. What was the Nevada Lumber Company engaged in?

A. Manufacturing lumber; selling lumber.

Q. Did you know the firm C. A. Bragg & Co.?

A. Yes, sir.

Q. Were you a member of that firm?

A. I was.

Q. What business was that firm engaged in?

A. Selling lumber; buying and selling.

Q. Did C. A. Bragg & Co. sell any lumber to the Nevada and Oregon Railroad Company?

A. Yes, sir.

Q. What kind of lumber?

A. Ties, timbers, planks, shingles, dressed lumber, and all kinds.

Q. What time was that sold? I am confining your examination in this matter to what these bonds were issued for.

433 A. It was sold in the summer of 1882.

Q. Before or after Moore left?

A. After Moore left.

Q. For what purpose was the lumber and ties, and so forth, used?

A. Used for the construction of the Reno Division of the railroad; building depots.

Q. When did the Nevada Mill and Lumber Company, if ever, sell any lumber to this company?

A. Last fall a year ago.

Q. The fall of 1882?

A. The fall of 1882.

Q. What was that used for?

A. That was used for the construction of the road and for depots at Long Valley, and I guess depot in Reno, too.

Q. What amount of lumber did C. A. Bragg & Co. sell to the Nevada and Oregon Railroad Company?

A. I could not answer that question, Judge.

Q. What was the amount of the bill?

A. $1,975.55.

Q. Was that bill for lumber at the market rate here in Reno at that time?

A. Yes, sir; or below it.

Q. Here is another bill, C. A. Bragg & Co., $1,103, same company.

A. They owed C. A. Bragg $1,975.55. They owed Washoe Mill and Lumber Company $1,103.16.

Q. Was the bill of $1,103.16 at the market rate for the

434 materials furnished at that time?

A. It was.

Q. What amount did the Nevada Lumber Company furnish the railroad company?

A. The amount due the Nevada Lumber Company last fall was $1,205.01. The company had paid the Nevada Lumber Company some considerable, and the balance due was $1,205.01.

Q. Did C. A. Bragg assign any of those bills to the Washoe Mill and Lumber Company?

A. C. A. Bragg was a company doing business here and sold out to the Washoe Mill and Lumber Company; consequently they sold all their bills.

Q. Did they sell the bills you have mentioned as having been furnished by the Washoe Mill and Lumber Company in the sale by C. A. Bragg & Co. to that company?

A. No; the amount due C. A. Bragg & Co. was not sold to Washoe Mill and Lumber Company.

Q. Was an assignment made by C. A. Bragg to any of these companies? It says in the book here assignee of C. A. Bragg.

A. No; they were not sold. I sold out of that company.

Q. Were these amounts that you have mentioned as due from

the Washoe Mill and Lumber Company and Nevada Lumber Company due on the 29th day of January of the present year?

A. Yes, sir.

435 Q. Did those companies receive any of the first-mortgage bonds in payment of those bills?

A. They did.

Q. To whom were those bonds delivered? What person did they finally reach?

A. Mr. Schooling.

Q. By whose direction?

A. By the Washoe Mill and Lumber Company and Nevada Lumber Company's direction.

Q. State whether or not those are the bonds that Mr. Schooling has just testified to.

A. They are.

Cross-examination of C. A. BRAGG by Mr. CLARKE:

Q. When were the bonds delivered to Schooling?

A. I don't know.

Q. About what time?

A. I would not say when they were delivered to Schooling; I think shortly after they were issued.

Q. Before or after the suit was commenced?

A. Before.

Q. Sure about that?

A. I am not sure.

Q. Were these bills for lumber that you have testified to furnished on the Moore contract for construction of the road?

A. No, sir.

Q. Had the company taken the contract off Moore's hands

436 at that time?

A. Moore had given up his contract.

Q. I asked you if the company had taken it off his hands?

A. No. I don't think they taken it off his hands.

Q. To whom were the bills charged?

A. Nevada and Oregon Railroad Company.

Q. Sure?

A. I am.

Q. Not to Moore?

A. No, sir.

Q. Have you looked at the books with reference to that, Captain?

A. Yes, sir.

Q. You know at no time they were charged to Moore?

A. Yes.

Q. You were a director and still one?

A. Yes, sir; I am still.

Q. You know the fact that the goods were sold to Nevada and Oregon Railroad Company and were charged to it? I mean the lumber and timber, and charged to the Nevada and Oregon Company and not to Moore.

A. Yes, sir.

Q. Were these ties and this lumber used in the construction of the road?
A. It was.
Q. Reno Division?
A. Reno Division.
Q. Have you any other security except these bonds?
437 A. None.
Q. No payment has been made?
A. No, sir.
Q. You knew Moore very well?
A. Yes.
Q. You had dealings with him during the time he was engaged as director?
A. Yes, sir.
Q. Not only as an individual and citizen, but as a contractor of the road?
A. Yes, sir; I had considerable dealing.
Q. You knew his relationship with the road?
A. Yes, sir; I presume I do.
Q. Did you know his relationship with the Moran Brothers?
A. I don't know; only as he told me.
Q. Did he tell you?
A. He told me that he had negotiated with Moran for money to go on and build the road.
Q. Tell you how much?
A. He had negotiated for 310 bonds at 80 cents on the dollar.
Q. How much a mile?
A. I think the bonds were issued for $10,000 a mile.
Q. This money was to be used in the construction of the road?
A. Yes, sir.

End of testimony of C. A. Bragg.

438 I have read over the foregoing pages of my testimony, being my direct and cross-examination, corrected the same, and the same is correct.

C. A. BRAGG.

Subscribed before me in the presence of the respective attorneys this 15th day of October, A. D. 1883.

N. SODERBERG,
Special Examiner.

D. W. BALCH, called for defendants, having been duly sworn, testified as follows:

Direct examination by Mr. DEAL:

Q. In your testimony for plaintiffs in this action you spoke of a lien which Mr. McMurray, one of the defendants, filed upon the railroad of the Nevada and Oregon Railroad Company for some $22,000 for railroad iron that he had furnished to build the road. State

what inducement, if any, you held out on the part of the Nevada and Oregon Railroad Company to secure that release from McMurray.

A. The inducement that I held out to Mr. McMurray was this, that the railroad company would reimburse him in some way. That way at the time the release was handed to me was not known to us how it would be.

Q. That was really the consideration for which he granted the release?

439 A. Yes, sir; that the railroad company would see him paid.

Q. Examine that paper and state whether that is a copy of the release (referring to Def'ts' Ex. "B").

A. This is a copy of the release executed by Mr. McMurray under those representations. Judge Webster drew it up.

Defendants offer said release in evidence in connection with Mr. Balch's testimony.

Admitted, and marked Defendants' Exhibit "B."

DEFENDANTS' EXHIBIT B.

Copy.

This is to certify that I, H. J. McMurray, of the city and county of San Francisco, in the State of California, for and in consideration of one dollar to me in hand paid by the Nevada and Oregon Railroad Company, a corporation, do by these presents release and forever discharge the lien in my favor and now held by me on said company's railroad, beginning at a point at or near Aurora, in the State of Nevada, and from thence extending northerly in the State of Nevada until said railroad intersects the line between the State of California and Nevada at a point near the house of one Chas. Roberts, and from thence northerly in the State of California to a point at the State line between the States of California and Oregon where said California & Oregon line intersects the eastern boundary or shore of Goose Lake, said lien and notice of claim thereof being duly

440 of record on pages 322, 323, 324, and 325, Book "E" of Liens, records of Washoe county, State of Nevada.

And I hereby authorize and empower John B. Williams, county recorder of said county of Washoe, to enter of record a full and complete release of said lien, but be it understood that the moneys and claim secured by said lien shall remain a claim against said railroad company and Thomas Moore, who is named in the notice of lien as fully as through this release of said lien had not been made.

Dated the 17th day of October, A. D. 1882.

(Signed) H. J. McMURRAY. [SEAL.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Personally appeared before me, Geo. T. Knox, a commissioner of deeds in and for the State of Nevada, duly appointed and acting in

said State of California, H. J. McMurray, who is to me known to be the person who signed and executed the above and foregoing instrument of release, and who personally acknowledged to me that he made, signed, and executed said instrument of release freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed
441 my seal of office, at the city and county of San Francisco, State of California, this seventeenth day of October, A. D. 1882.

[L. S] (Signed) GEO. T. KNOX,
A Commissioner for the State of Nevada — California.

Q. Please examine the contract testified to by Mr. Smith, marked Defendants' Exhibit "A," and state whether you executed that on the part of the Nevada and Oregon Railroad Company.

A. Yes, sir. I executed this in accordance with a resolution of the company, by the direction of the corporation.

Q. How many of the first-mortgage bonds described in the complaint in this case were issued to Moran Brothers or negotiated by them when ten miles of this Reno Division was built?

A. 210 bonds.

Q. On ten miles of the road?

A. Yes, sir.

Q. How many when 17 miles were built?

A. 210.

Cross-examination of D. W. BALCH by Mr. CLARKE:

Q. Did McMurray furnish any iron to the railroad?

A. He furnished to Moore and the Nevada and Oregon Railroad Company.

Q. Why do you say for the railroad company?

A. Because he put a lien on the road.

442 Q. That is the reason? Is it not the truth that he advanced a sum of money which was used to purchase iron?

A. Well, he bought the iron and it was sent up here and used in the construction of this road.

Q. It is my understanding that McMurray in place of furnishing iron furnished money; he advanced a sum of money. Is not that the truth?

A. No, sir; that is not the truth. He bought the iron himself.

Q. He did buy the iron? Bought for whom?

A. Thomas Moore and the Nevada and Oregon Railroad Company.

Q. Who did he buy it from?

A. Bought it from the Pacific Rolling Mills.

Q. Did he make a contract with the Pacific Rolling Mills, do you remember?

A. I don't know as he did; I could not say.

Q. If there is a contract you never saw it?

A. No, sir.

Q. When was it bought?

A. It was bought—this bill of about $23,000—I don't know the exact time; but between the 27th September, 1881, and the 15th of December, the same year.

Q. Was it during the time that Moore was a contractor to build the road and during the time he was engaged in the fulfillment of the contract?

A. Yes, sir.

Q. How came McMurray to buy that iron?

443 A. Well, he was solicited by Thomas Moore and Mr. Fowler to buy it.

Q. What connection, if any, with the company did McMurray then have?

A. At that time he was a stockholder. A portion of the time, I think, he was a trustee or director.

Q. At the time the iron was purchased?

A. Yes, sir.

Q. What connection had he with the company at the time he executed the release and the bonds was issued to him in payment?

A. At the time that he executed the release and the bonds was issued to him he was not a director.

Q. How long before that had he ceased to be a director?

A. I could not tell. The records show.

Q. Shortly before?

A. Well, he ceased to be a director on the 7th of June, 1882; the date of the release is the 17th of October, 1882.

Q. Do you know to whom the Pacific Rolling Mills charged the iron?

A. I do not.

Q. Whether to Moore or McMurray or the Nevada and Oregon Railroad Company?

A. I do not.

Q. Did they ever present any bill to the company?

A. Not that I know of.

Q. When, if you know, did McMurray pay the Pacific Rolling Mills for the iron?

A. I think on the delivery of the iron on the cars.

444 Q. Remember when it was?

A. At various times.

Q. The iron was used in the construction of this 30 miles of road?

A. Yes.

Q. Did Moore get credit for it against the company?

A. Well, what do you mean; that he got paid for it?

Q. Yes; in anything—any kind of settlement.

A. Yes; he got paid. He was paid in advance for certain things which he did not do.

Q. Then it is true that the railroad company paid twice for that iron—paid Moore for it once and McMurray for it second? Is not that so?

A. Well, I don't know whether they have or not. I could not tell without examining Mr. Moore's account.

Q. That is your understanding?

A. No.

Q. You say you don't understand that Moore has been settled with?

A. He still claims a large amount due him from the railroad company.

Q. You know very well there is not anything due him?

A. I don't know whether there is or not. It has never been settled. He claims it.

Q. Is it not true that McMurray became the surety of Moore to the Pacific Rolling Mill- for that iron?

A. Not to my knowledge.

445 Q. Is not that the extent of his claim, that he became surety for Moore, and afterwards had to pay it?

A. No, sir; he paid the cash right out. That was the only surety they took.

Q. They furnished the iron and he paid for it. Do you know whether he took any evidence from Moore—note or promise of any kind?

A. No, sir; I do not.

Q. You do not say that he did not?

A. He took this—he took a draft on Mr. Moran for $80,000 that was never paid.

Q. McMurray did?

A. Yes, sir.

Q. Moore's draft?

A. Yes, sir.

Q. Was that in part for the iron?

A. Yes, sir.

Q. What else was included, if you know, besides the iron?

A. I don't know; probably interest.

Redirect examination of D. W. BALCH by Mr. DEAL:

Question. When you speak of a lien you mean a mechanic's lien, allowed under the laws of Nevada, filed in the county recorder's office?

A. Yes, sir.

Q. When you were asked the question whether any con-

446 tract was made between McMurray and the rolling mills for the purchase of the iron you answered you did not know. What you understand by contract is written contract?

A. Yes, sir.

Q. You know there was a contract of some kind between McMurray, either verbal or written?

A. He purchased the iron and paid for it.

Q. You know that he did purchase the iron and paid his money to the rolling mills, and the iron was delivered to him on the cars?

A. I don't know who it was delivered to. It was put on the cars and he paid for it.

Q. Was this draft of $80,000 on Moran Brothers ever surrendered by McMurray?

A. Not yet.

Mr. CLARKE: He holds it yet?
A. He holds it yet.
Mr. DEAL: Was it presented for payment and not paid?
A. Yes, sir; and not paid.
Q. Was it due when presented?
A. I think it was a sight draft.
Mr. CLARKE: Do you say of your own knowledge that McMurray made a contract of purchase with the rolling mill?
A. No; I do not.
Q. If I understand you, you are not able to say whether McMurray or Moore made the contract?
A. That is what I said—that is, the trade for the iron.

447 I have read over and corrected the foregoing pages of my testimony, being my direct, cross, and redirect examination, and the same is correct.

D. W. BALCH.

Subscribed before me, in the presence of the respective parties' attorneys, this 15th day of October, A. D. 1883.

N. SODERBERG.
Special Examiner.

W. R. CHAMBERLAIN, called for the defendants, sworn and examined.

Direct examination by Mr. DEAL:

Question. What is your name, age, and residence?
A. I am 50 years old; my residence and place of business is in Reno, Nevada; my name is W. R. Chamberlain.
Q. Do you hold any first-mortgage bonds of the Nevada and Oregon Railroad Company described in the bill of complaint in this action?
A. I hold four bonds of $1,000 each.
Q. When were they delivered to you?
A. I don't know that I can tell you the date. It was last fall some time or last spring.
Q. By whom were they delivered—Mr. Manning?
A. No; Mr. King. Geo. A. King told me he left them at the bank for me.
Q. You received them before the suit was commenced?
448 A. Yes, sir; before the suit was commenced, early in the spring, February or March.
Q. You still hold them?
A. I still hold them.
Q. How do you hold them; for what security?
A. Security for debt.
Q. Due by whom?
A. Geo. A. King.
Q. To you?
A. Yes, sir.

Cross-examination by Mr. CLARKE:

Q. George A. King was the secretary of the company?
A. That was my understanding.
Q. The same person mentioned in the records as director and secretary?
A. Yes, sir.
Q. What was the character of his indebtedness to you?
A. Board and lodging and some money loaned.
Q. It was a personal claim against King?
A. Yes, sir.

End of testimony of W. R. Chamberlain.

I have carefully read over and corrected the foregoing testimony, consisting of two pages, and the same is correct.

W. R. CHAMBERLAIN.

Subscribed before me, in the presence of the attorneys for the respective parties, this 25th day of October, 1883.

N. SODERBERG,
Special Examiner.

449 C. T. BENDER, called for defendants, sworn and examined.

Direct examination by Mr. DEAL:

Q. What is your full name, age, residence, and occupation?
A. Chas. T. Bender; age, 33; cashier of the 1st National Bank at Reno.
Q. Did you, on or about the first day of January, receive 28 first-mortgage bonds of the Nevada and Oregon Railroad Company on any account for Manning & Berry?
Ans. I have got it here—February 10th, 1883.
Q. How many bonds did you receive?
A. 31 bonds, $31,000, in full settlement of the claim of Manning & Berry against the road for 22,821.10. It might be that three of those bonds, fractions of them, belonged to other parties.
Q. The 28 one-thousand-dollar bonds belonged to Manning & Berry?
A. Yes, sir.
Q. At the time you received the 28 bonds for Manning & Berry were they indebted to the bank?
A. They were indebted to us at the time.
Q. Since then they have paid that?
A. Yes, sir.
Q. And you now hold them for Manning & Berry?
A. Yes, sir.
Q. The other three bonds, you say, you hold for various parties who are interested in them?
A. We hold them for Manning & Berry.
450 Q. At the time you received those bonds did they not tell you they were for various parties?

A. I don't remember. As far as we are concerned, we are holding them for Manning & Berry.

Q. In the answer in this action which was put in for you it was alleged you held, as trustee for W. E. F. Deal, one of those bonds to the extent of $625 of the face of it, and as trustee for Clayton Belknap one bond to the extent of $428.75 of the face of it, and as trustee for William Webster one bond to the extent of $125 of the face of the bond, and as trustee of Lonkey & Smith one bond to the extent of $330.88, and as trustee for I. Schooling one bond to the extent of $354.65, and as trustee for the defendants, Manning & Berry, one bond to the extent of $526.37, and as trustee for Hymers & Comstock one bond to the extent of $586.25. You say you hold them still in the name of Manning & Berry?

A. Yes—if those amounts are represented in these 3 one-thousand-dollar bonds.

Q. Can you state you hold them for various parties?

A. I presume I do, although I have had no knowledge of the fact outside of the claim of Manning & Berry. I hold that many bonds for Manning & Berry. If these parties have an i-terest in them I suppose it is all right.

Q. So far as you are concerned, you would be bound to de-
451 liver them, according to the interest of various parties, as directed by Manning & Berry, and you still hold them?

A. Yes, sir.

End of direct examination.

Cross-examination — C. T. BENDER by Mr. CLARKE:

Question. You hold as trustee 31 bonds?

A. Yes, sir.

Q. They were delivered to you by Manning & Berry?

A. They were delivered to us; we receipted to the Nevada and Oregon Railroad Company for the bonds. The accounts of Manning & Berry were assigned to us.

Q. They were delivered to you by the Nevada and Oregon Railroad Company?

A. Yes, sir.

Q. To secure an indebtedness of Manning & Berry. You do not know of any other party and interest to be secured except Manning & Berry?

A. I had no knowledge of any except Manning & Berry, although Manning & Berry might have been acting as trustee for the other parties without my knowledge.

Q. They did not inform you?

A. They did not inform me.

Q. Nor did the company inform you?

A. No, sir.

Q. How were those bonds issued?
452 A. They are one-thousand-dollar bonds.

Q. In whose favor?

A. In favor of bearer, I think. I have not examined them lately.

End of testimony of C. T. Bender.

I have carefully read over the foregoing six pages of my testimony and corrected the same, and the same is correct.

C. T. BENDER.

Subscribed before me, in the presence of the attorneys for the respective parties, this — day of October, 1883.

N. SODERBERG,
Special Examiner.

ROB'T H. LINDSAY, called for the defendants, was sworn, and testified as follows:

Direct examination by Mr. WEBSTER:

Question. What is your age and residence?

A. I am in my 43rd year. My name is Robert H. Lindsay. My residence is Reno, Nevada.

Q. Did you at any time receive any bonds of the Nevada and Oregon Railroad Company?

A. I did, sir; seven bonds, I believe, of $1,000 each.

Q. From whom did you receive these bonds?

A. From D. W. Balch.

Q. When did you receive them, approximately?

A. My recollection is it was during the past spring or
453 summer—along about June, 1883; that is my judgment. I don't pretend to be accurate about it.

Q. That is approximately correct. On what account or consideration did you receive these bonds?

A. I may state that I am by profession an attorney-at-law, and as such was employed by A. J. Clarke, of this place, to prosecute a claim which he held, aggregating somewhere in the neighborhood of $3,000, against D. W. Balch, A. H. Manning, W. F. Berry, C. A. Bragg, H. J. McMurray, some New York man, Nevada and Oregon Railroad Company, and others. Also, I was attorney for Agnes McLellan, the administratrix of the estate of H. G. McLellan, deceased, and also the attorney for one J. H. Parker. I had brought suit. The McLellan claims were directly against the company. The Parker claim was against Thomas Moore, with a lien against the railroad company property. The Clarke claim was against the company and these parties that I have named as defendants in the suit in which he was plaintiff, alleging that the company and these various parties had promised to pay Moore's debt and holding them and claiming that they were liable to Clark on that promise. These bonds were received by me in settlement of those several claims. I satisfied the docket. The Clark suit did not go to judgment, but while pending it was adjusted in that way. I took these bonds from
Mr. Balch in settlement of the demands. Clark's suit was
454 for goods, wares, and merchandize sold to Mr. Moore, all of which goods, wares, and merchandize were used in and about

the construction of the railroad. The McLellan claim was for services performed for the railroad company as an engineer, for salary as and engineer. That claim also included an assigned claim of John McLellan to his brother, H. J. McLellan, for similar services performed directly for the railroad company. I am pretty positive that that is a correct statement. The Parker claim was for labor performed as a mechanic and bridge-builder for Mr. Moore as contractor of the road, and Mr. Parker had a lien filed upon the road for his work, and his claim went to judgment, I believe. The court allowed Parker judgment for the lien. The $7,000 in bonds which I accepted are in settlement of these claims. I aimed to take the bonds at eighty cents on the dollar, but, as a matter of fact, it being impossible to break the bonds up into fractional parts, my recollection is I only received 65 cents on the dollar for my claim, taking the $7,000 in bonds.

Q. Do you remember the amount of the McLellan claim?

A. My recollection is that the McLellan claim, including the costs, amounts to about $2,000.

Q. Do you remember the amount of the Parker claim?

A. Three hundred, I think. That is my recollection; maybe something over that.

455 Q. These are the several claims you have mentioned for which these bonds were delivered to you?

A. Yes, sir.

Q. Do you know whether the company passed any resolution by which this arrangement was made or ratified in any way?

A. That I don't know.

Q. You still hold those bonds?

A. I still hold the bonds. I have an individual interest in the bonds myself, but, of course, hold them as attorney for these parties.

End of direct examination.

Cross-examination of ROB'T H. LINDSAY by Mr. KING:

Question. Have you stated the full and only consideration upon which the bonds were issued, Mr. Lindsay?

A. Well, as to the issuance of the bonds, I don't know anything about that.

Q. You have stated the full and only consideration upon which you received the bonds from Mr. Balch?

A. Yes, sir.

Q. It was not in payment of professional services rendered by yourself to any one that you received them?

A. Not at all.

Q. You say that the judgment for Clark was about $3,000?

A. Yes, sir.

456 Q. Was it for goods, wares, and merchandiz- furnished to Moore?

A. Yes; besides goods, wares, and merchandize, a considerable amount of it was for cash advanced to laborers.

Q. Was there any right to lien asserted by Clarke upon the prop-

erty of the company or any lien held by him upon that property?

A. No, sir.

Q. On what contract was it that he claimed to recover against Balch, Manning & Berry, Bragg, and the New York man, and the railroad company?

A. It was by virtue of a contract in writing, which is recorded here in the recorder's office of this county. It was a contract purporting to be executed by Balch, Berry and Manning, and H. J. McMurray, C. A. Bragg, and the company, and the New York man, Burt, as trustee.

Q. Balch was acting as attorney in that for these parties?

A. Yes, sir.

Here it is admitted that the contract referred to by the witness is the same contract which is in evidence under the commission executed in New York.

A. (Continuing:) This was an action brought by Clark to make a third party liable for the debt of another party, such third party having promised Clark's debtor to pay his debt, Clark
457 adopting that promise and claiming that the promise was made for his benefit.

Q. Do you know upon what consideration *of* for what purpose the bonds were issued to Balch?

A. The bonds, as I understand it, were not issued to him. I simply received the bonds from Balch. I do not know that these bonds were issued to any particular individual. They were payable, I believe, to bearer.

Q. Do you know upon what consideration or for what purposes they were issued at all?

A. That I do not know anything about. I simply know that the president of the Nevada and Oregon Railroad Company delivered to me these bonds with the agreement that I have stated, and in accordance with that agreement I satisfied these several claims of my clients.

Mr. WEBSTER: The bonds were delivered to you in satisfaction of those claims?

A. Yes, sir.

End of testimony of Rob't H. Lindsay.

I have carefully read over and corrected the foregoing pages of my testimony, being my direct and cross examination, and the same is correct.

ROB'T H. LINDSAY.

Subscribed before me, in the presence of the attorneys for the respective parties, this 29th day of October, 1883.

N. SODERBERG,
Special Examiner.

458 ANDREW FRASER, called for the defendants, was duly sworn, and testified as follows:

Direct examination by Mr. DEAL:

Question. What is your name, age, and residence?

Answer. My name is Andrew Fraser; age, 44; my residence is the town of Reno.

Q. What is your business?

A. I am conducting foundry business.

Q. How long have you been engaged in that business?

A. Most of the time for the last eighteen years.

Q. Did you, prior to the 29th day of January, 1883, do any work—furnish any material for the Nevada and Oregon Railroad Company?

A. I did.

Q. What was the value of that work?

A. My bill, the last bill rendered to the company, was $897.54. That was the bill.

Q. Was that work done for the company?

A. That was my understanding. It is so charged on my books.

Q. What was it, generally?

A. The major part of it was repairs on a locomotive and tender.

Q. Locomotive and tender used in the operation of the road?

A. Yes, sir. Another portion was six or eight switches—frogs and switches—the whole arrangement I made for them—six or seven switches.

459 Q. By whom were the repairs ordered?

A. By the officers of the company; I think by Mr. Balch and some of the trustees; it was the company's officers that ordered the whole, and I charged it to them.

Q. Have you been paid for that in any way?

A. I think I received nothing on that account except a bond and a fraction on a settlement.

Q. By the bond you mean a first-mortgage bond, described in the bill of complaint in this action?

A. I believe it is.

Q. Have you that bond yet?

A. It is in my safe.

Q. By whom is the fraction of a bond belonging to you held?

A. It is held by C. T. Bender, in the amount named in the answer.

Q. At what per cent. did you receive the bonds?

A. 80 per cent.

Q. At the time when you received these bonds did you know or have any notice of the terms of any contract between Thomas Moore and the Nevada and Oregon Railroad Company, under which he agreed to build this road?

A. I had no personal knowledge of any contract, further than what was in the daily press and talk I heard about it; I had no personal knowledge.

460 Q. Can you state the date the bonds were delivered and by whom?

A. I think it was the last of January, this year.

Q. Remember who delivered it?

A. I have forgotten; I guess it was Mr. Manning.

End of direct examination.

Cross-examination of ANDREW FRASER by Mr. CLARKE:

Question. When did you furnish these things to the Nevada and Oregon Railroad Company, Mr. Fraser?

A. My recollection is it was all in the year 1882. I thing it commenced early in the spring and ran through the season of 1882. The dates is with the bill, but I have not got it with me. The switches and the minor items were all done in 1882, and so were the repairs on the locomotive and tender; that comprises all the bill. My previous bill was with Moore; that was settled by taking some stock of the company; that was before the new management took hold of the road.

Q. You furnished these things to the Nevada and Oregon Railroad Company?

A. Yes, sir.

Q. It was not a transaction between yourself and Moore?

A. No, sir; the previous bill that I spoke of was with Moore.

461 Q. The sum charged for the material furnished was at the regular price?

A. Moderate and ordinary price, such as I would charge you or any other gentleman.

Q. Had you any knowledge of the contract between Moore and the Moran Bros.?

A. All the knowledge I have of any such contract is what I got from the papers—I seen reference to the railroad matters.

Q. What papers?

A. The press.

Q. Did you know through the press of the existence of a contract between Moran Bros. and Moore?

A. I did not.

Q. You knew Moran Brothers were furnishing money to build the road?

A. I did not know it. I have no personal knowledge of any of these things.

Q. You had that understanding?

A. Not from any official source.

Q. I don't care from what source.

A. I know nothing of those matters except from town talk.

Q. Did you know it from town talk that Moran Brothers were furnishing money to build the road?

A. Only in that way.

Q. Did you know it in that way?

A. In giving evidence I understand it is only my personal knowledge that I am to state, and that I have none of.

462 Q. Did you know from the press or town talk or from Moore or any person the fact that the Moran Bros. were furnishing money to build the road?

Counsel for defendants objected to the question as irrelevant and immaterial.

Q. As to the legal effect of that you have nothing to do with that now. Mr. Fraser, did you know from the press or town talk or from Moore or from any person the fact that Moran Brothers were furnishing the money to build the road?

A. I knew of references to it, but I don't know of any contract, even in that way, or did not know——

Q. I don't speak of any contract between Moran Bros. and Moore. I speak now merely of the furnishing of the money by Moran Brothers to build the road. Did you not know that fact without regard to any contract?

A. I believed parties were advancing money on the bonds of the company, but did not know who they were or how much they were doing or what they were doing.

End of cross-examination of Andrew Fraser.

Redirect examination of ANDREW FRASER by Mr. DEAL:

Question. When you say that you knew that Moran or somebody else was furnishing money to build the road——

A. (Interrupting.) I said I believed.

463 Q. You mean that you merely heard a report to that effect without regard to whether it was true or not?

A. Yes, sir.

Q. Had you any means of verifying it?

A. I never had.

Q. You spoke of this bill being for work on the locomotive and tender, and so forth, and you also spoke in that connection about another bill. Had the other bill anything to do with this?

A. Not at all; that was settled before this one was contracted.

End of testimony of Andrew Fraser.

I have read over and corrected the foregoing testimony, comprising — pages, being my direct, cross, and redirect examination, and corrected the same, and the same as corrected is correct.

ANDREW FRASER.

Subscribed before me, in the presence of the attorneys for complainants and defendants, this — day of October, A. D. 1883.

N. SODERBERG,
Special Examiner.

R. L. FULTON, called for the defendants, sworn and examined.

Direct examination by Mr. DEAL:

464 Question. What is your name, age, and residence, and profession?

A. Robert L. Fulton; residence, Reno; age, 36; business, publishing Reno Gazette.

Q. Did you do any printing for the N. & O. R. R. Co.?

A. Yes, sir.

Q. What was the amount of the bill?

A. $343, the last bill.

Q. Was any fractional part of a first-mortgage bond of the Nevada and Oregon Railroad Company issued to your trustee for that amount?

A. Yes, sir; I believe so.

Q. Does that trustee still hold it?

A. Yes, sir.

Q. For you?

A. Yes, sir.

Q. You remember the time when it was issued?

A. No, sir; I do not exactly. I can tell by the minutes of the company.

Q. There was a meeting of the directors January 31, 1883?

A. That is about the time.

Q. Do you remember what per cent. those bonds were issued?

A. 80 per cent. of the face value.

Q. In the answer in this action it is alleged that Charles T. Bender holds one of said bonds in trust for you to the amount of $428.75; is that correct?

A. I believe so; yes, sir.

Q. And you say this printing of blanks, and so forth, were furnished directly to the company?

465 A. Yes, sir.

End of direct examination.

Cross-examination of R. L. FULTON by Mr. CLARKE:

Question. At what time?

A. Different times. I would have to refer to the books.

Q. Was any part of the account for Thomas Moore?

A. I believe not. That was settled before this altogether.

End of testimony of R. L. Fulton.

I have carefully read over and corrected the foregoing testimony and the same is correct.

R. L. FULTON.

Subscribed before me, in the presence of the attorneys for the respective parties, this — day of October, 1883.

N. SODERBERG,
Special Examiner.

LAW OFFICE OF WILLIAM WEBSTER, ESQ.,
RENO, NEVADA, *October* 22, 1883.

The parties appeared, by their respective attorneys, complainants being represented by Judge S. D. King and defendants by William Webster, Esq.

C. A. BRAGG was recalled for defendants, and testified as follows:

Direct examination by Mr. WEBSTER:

Q. You testified the other day when on the stand that the accounts and bills that were put in by you were charged against the railroad, I believe, and now you want to give a statement,
466 as I understand, as to how the charges were made?

A. There is one bill that was held and owned by C. A. Bragg & Co. of $1,975.55; that was purchased under Moore's administration.

Q. Go on and state how it was charged; was it charged to Moore or to the company?

A. It was originally charged to Moore. We charged to "Moore," "the railroad company," and "construction" by his special request to keep the several accounts seggregated, afterwards transferred to the railroad.

Mr. KING: Moore directed you to keep three several different accounts?

A. Yes, sir; there was a portion of this account, *was* the round-house, wood, and lumber for other purposes. I am referring to the $1,975.55.

Q. Was there a lien placed on the round-house for any portion of all this account?

A. There was a lien covering $950.

The lien was as follows:

Notice of Lien.

C. A. Bragg & Co. against Nevada and Oregon R. R. Co. by Thomas Moore, contractor, and Jno. Sunderland.

Know all men by these presents that C. A. Bragg and W. M. Henry, partners, doing business under the firm name and style of C. A. Bragg & Co. in Reno, county of Washoe, State of Nevada, have, as original contractors, furnished materials, namely,
467 lumber and other building materials, to be used and which have been used in the construction of a building situated in the town of Reno, Washoe county, Nevada, hereinafter more particularly described; that the following is a just and true account of the demand due for said materials after deducting all proper credits and offsets:

For lumber and building materials furnished Thomas Moore, contractor N. & O. R. R. Co., from August 12th, 1881, to October 27th, 1881, both inclusive, amounting to the sum of $933.03, after deduct-

ing all just credits and offsets; that it is our desire and intention, for the purpose of securing said sum of money, to avail ourselves of the benefits of the act of the Legislature of the State of Nevada entitled An act to secure liens to mechanics and others, and to repeal all other acts in relation thereto, approved March 2nd, 1875; and it is our intention to claim and hold such lien not only upon the said building, erection, and superstructure, but also the land upon which the same is constructed and erected, together with a convenient space about the same, or so much as may be required for the convenient use or occupation thereof; that 60 days have not elapsed since the completion of said contract or last materials furnished; that the following is a correct description of the property to be charged with the said lien, namely, that certain frame building situated between
468 the main track of the N. & O. R. R., the Reno and Fort Bidwell wagon road and 4th street, in the town of Reno, Washoe Co., Nevada, known as the engine-house of the N. & O. R. R. Co., situated on land belonging to Jno. Sunderland and known as the property of the N. & O. R. R. Co., who are the reputed owner- of said building. Said lumber and building materials were furnished at the instance and request of Thomas Moore, with the knowledge and consent of the reputed owner- of said building, the N. & O. R. R. Co., and of said land, the said Jno. Sunderland; to be paid for in gold coin of the United States as follows: cash within 30 days.

C. A. BRAGG & CO.

STATE OF NEVADA, }
County of Washoe, } ss:

Wm. Henry, being first duly sworn, deposes and says that he is one of the firm of C. A. Bragg & Co., the claimants in the foregoing notice of intention to hold a lien named; that he has read the same claim and notice by him subscribed and knows the contents thereof, and that the same is in all respects just and true, and that it contains a just and true statement of the demand due said claimant-, after deducting all proper credits and offsets.

WM. HENRY.

Sworn to before me this 24th day of Dec., A. D. 1881.

JNO. B. WILLIAMS,
County Recorder, Washoe County, Nevada.

469 (Endorsed:) Notice of lien. C. A. Bragg & Co. against Nevada and Oregon Railroad Company and John Sunderland. Filed at request of William Henry Dec. 24th, A. D. 1881, at 30 min. past 12 p. m., and recorded in "Book of Liens," records of Washoe county, Nevada, pages 321–'2. Jno. B. Williams, recorder (county recorder).

(Endorsed:) In 2nd dist. court, Washoe county, Nevada. Charles Jack *v.* Thomas Moore *et al.* Lien claim of C. A. Bragg & Co. Filed April 1st, 1882. R. S. Osburne, clerk, by W. L. Knox, deputy.

Q. Did you release this lien at the request of any one or otherwise?

A. Yes, sir; I released it.

Q. At whose request?

A. At the request of D. W. Balch and Mr. Berry.

Q. Then the lien was not released at the request of the railroad company?

A. No; the railroad as a company never requested.

Q. Did Balch as the president of the company?

Objected to as leading by counsel for complainants.

470 Q. How did it come to be included in this $1,900 and allowed by the railroad?

A. It was part of the account.

Q. How did the account come to be allowed?

A. It was allowed by the railroad Co.

Q. Was there any reason?

A. Yes, sir; the reason was because the material had been furnished and the railroad company owed us.

Q. Was this material furnished to Moore or the railroad company originally?

A. To the railroad company.

Q. I understand you to say that the whole $1,900 was so furnished?

A. Yes, sir.

Q. And its being charged to Moore was simply on account of the request made by him of keeping the account separate?

A. Yes, sir.

End of direct examination.

Cross-examination of C. A. BRAGG by Mr. KING:

Question. Do you say that the material was furnished to the railroad company and upon the credit of the railroad company originally?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. Who bargained with you for this material?

A. Moore.

471 Q. Did you know in what capacity Moore was acting?

A. He was acting as contractor, I believe.

Q. Was he not buying the material to complete his own contract and for his own benefit?

A. Buying material for the railroad.

Q. I asked you if he was not buying material for himself and to complete his contract with the railroad?

A. No, sir; not to my knowledge.

Q. Did you say that some portion of it was charged to Thomas Moore?

A. I did; I think it was.

Q. How much of it?
A. I could not say; I should judge about $950.
Q. Out of this $1,975? Well, to what other accounts were the balance charged?
A. Nevada and Oregon railroad.
Q. Have you not spoken of a construction account?
A. Yes, sir.
Q. How much was charged to the construction account?
A. I could not state; I don't think any of this item was at all.
Q. You specified these 3 accounts?
A. I specified that we had account when we started to keep an account with the railroad. We had an account with Thomas Moore—
472 construction account and railroad—by his request, in order to keep the materials separate. He thought it would be some advantage, I don't know what.
Q. Why was any of it charged to Thomas Moore if it was sold to the railroad?
A. For the purpose of keeping the several accounts separate.
Q. If you sold me goods would you charge them to David Evans, so as to keep the accounts separate; is that the proposition?
A. No; but if I was selling you goods and you instructed me how to make the charges I should probably make them as you directed.
Q. Moore had no other connection with the Nevada and Oregon railroad than that of contractor for the construction of the road?
A. No.
Q. Do you know whether his contract called for the furnishing by him of material or not?
A. I do not.
Q. Upon whose credit did you sell the goods?
A. I sold the goods upon the credit of the Nevada and Oregon railroad.
Q. Who did you expect would pay you for the goods, Moore or the Nevada and Oregon railroad?
A. I expected the Nevada and Oregon railroad to pay.
Q. Did the railroad company ever afterwards assume this indebtedness?
A. Yes, sir.
Q. When?
473 A. I think it was—I don't know; the minutes will show—in December, 1882, or thereabouts.
Q. When was it first contracted with you, approximately?
A. 1882, I think.
Q. About what time?
A. Oh, I could not tell.
Q. Prior to December, 1882?
A. Yes, sir.
Q. Then what do you mean by the Nevada and Oregon Railroad Company assuming in December, 1882, its own debt contracted before that date?
A. Well, it was a debt contracted by——
Q. (Interrupting.) I ask what you mean by the railroad com-

pany assuming its own debt that had been contracted before the date of assumption by the railroad?

A. Well, I don't know how to answer that question. The railroad company assumed these liabilities against the railroad that accrued while Moore was here—after Balch went to New York.

Q. Do you mean that they assumed Moore's indebtedness? They could not assume their own very well. I may assume another person's indebtedness, but I never assume my own.

A. I don't know. There was a resolution went on the minutes.

Q. Did you ever have anything paid to you upon this indebtedness?

A. Yes, sir.

474 Q. You say that D. W. Balch requested you to release that lien?

A. Balch and Mr. Berry.

Q. Did Balch say anything as to whom he was acting for?

A. No.

Q. Did not? Who borrowed the money upon the land which was the occasion of your releasing that lien?

A. Mr. Berry, I believe; that is the way I understand it.

Q. Was it after the release of this lien that the company assumed this indebtedness or before?

A. think it was before—no, I think it was after. I could not say as to that, but my impression is it was after.

Q. After they assumed the debt the lien was released?

A. I think they did; I am not sure; I cannot remember dates.

Q. Did anybody else speak to you about keeping these accounts and how they should be kept except Moore?

A. No.

Q. I ask you who made payments upon this account, if you recollect?

A. There was no payment made upon this account. Mr. Moore had paid me money several times.

Q. Was he the only one that ever made any payments?

A. Yes, sir; I think he was; come to think of it, John Sunderland, treasurer of the company, also made me payments.

475 Q. Who directed the change of these accounts from Moore to the railroad company? You say that they were first charged to him.

A. They were transferred; no one directed it.

Q. That was your own action, then?

A. Yes, sir.

Q. Why did you make the change—because you could not get the money out of Moore?

A. We made the change because we wanted to compile the accounts—get them together.

Q. Wasn't it after you found you could not get any money out of Moore that you made the change?

A. I think it was; I think it was after he went to New York.

Q. Did you ever dun Moore for the payment of any of these accounts without getting money?

A. Yes, sir; I asked Moore whether the company could pay us.

End of cross-examination.

I have carefully read over and corrected the foregoing pages of my testimony, being my direct and cross examination, and the same is correct.

C. A. BRAGG.

Subscribed in the presence of the attorneys for the respective parties before me this 22nd day of October, 1883.

N. SODERBERG,
Special Examiner.

476 JERRY SCHOOLING, having been duly sworn, testified on behalf of the defendants as follows:

Direct examination by Mr. DEAL:

Question. What is your name, age, and residence?

A. My name is Jerry Schooling; age, 51, and residence, Reno, Nevada.

Q. Do you hold any of the first-mortgage bonds of the Nevada and Oregon Railroad Company described in the bill of complaint in this action?

A. I do.

Q. How many?

A. Five.

Q. When did you receive them and from whom?

A. I received them from Mr. Manning, but I forget just when. I think it was a day or two after the 31st of January, 1883. I knew the day they were issued. It was a very short time after.

Q. Upon what consideration did you receive them?

A. I received them as collateral security for debts owing me.

Q. By whom?

A. Washoe Lumber Company and Nevada Lumber Company.

Q. You still hold them?

A. Yes, sir.

Q. At the time that you received those bonds did you
477 know or have any notice of the terms of any contract between Thomas Moore and the Nevada and Oregon Railroad Company under which he was to build this railroad?

A. I knew nothing at all about it. I hold those bonds for more than the face of the bonds.

End of direct examination.

Cross-examination of JERRY SCHOOLING by Mr. CLARKE:

Question. If I understand you, Mr. Schooling, the companies that you have named—the Washoe Lumber Company and the Nevada Lumber Company—were indebted to you?

A. Yes, sir.

Q. They held these five bonds?

A. I don't know anything about the issuance of the bonds, or what they were issued for, or anything about it. Those five bonds were left with me by Mr. Manning by their direction, and I was to receive them by the arrangement with them as collateral security.

Q. Were you a member of either of these companies?

A. Of the Nevada Lumber Company.

Q. Not of the Washoe company?

A. No.

Q. What part of the indebtedness was due to you from the Nevada Company?

A. Well, the indebtedness is due from the Washoe Com-
478 pany to the Nevada Company and the Nevada Lumber Company was indebted to me.

Q. Did you exact it as security or did they give it to you voluntarily?

A. Well, I was trying to get something to secure me, and that was all they would offer.

Q. Did you ask it or was it offered to you?

A. I don't know as I asked directly for it.

Q. What relationship did Manning sustain to the bonds?

A. I don't think Manning knew anything about it. He brought them to me; he was there to deliver them.

Q. He was treasurer of the Nevada and Oregon Railroad Company?

A. I believe so.

Q. The railroad company did not owe you anything?

A. Personally, no. O, yes, they owed me a book account.

Q. No part of this demand that is secured?

A. I think not.

Q. You say they were indebted to the Nevada Lumber Company?

A. Yes, sir; they were.

Q. They were indebted to the Nevada Lumber Company?

A. Yes, sir.

Q. How much?

A. Between twelve hundred and thirteen hundred dollars.

Q. What for?

A. Lumber.

Q. To whom was it furnished?

A. Furnished to the company—to the road.

479 Q. I distinguish between the company and Moore.

A. Furnished to the company.

Q. It was after Moore had quit—under his contract?

A. It was after Moore had quit—under his contract.

Q. What sum do the five bonds secure; anything in addition to this indebtedness?

A. I hold it as security. They owe me more than that amount. The face of them would not begin to pay the amount they owe me.

Q. What sum of money were they delivered to you to secure?

A. Well, I don't think I can say positively; I think it was more than the face of the bonds.

Q. Is not the twelve or thirteen hundred dollars the debt that the bonds were delivered to secure?

A. No; to secure me what the Washoe and Nevada Lumber Companies owe me individually, not as a company. I am speaking now of what they owe me individually. I am not holding them on the part of any company, but individually for debts that is due me. I do not know anything about what the bonds were issued for.

Q. When you received those bonds did you know that Moore had a contract with the road to construct, to build the road?

A. I did not know anything about that.

Q. You knew Moore?

A. I knew Moore.

480 Q. You knew he was contractor and builder?

A. I knew that just as any other man would know—from what other people were speaking of. I knew generally that Moore was the contractor.

Q. Did you know that the Moran Brothers were furnishing the money?

A. In the same way I knew it—by the general talk of the town.

End of the testimony of J. Schooling.

I have read over the foregoing pages, being my direct and cross examination, and corrected the same, and said testimony as so corrected is correct.

JERRY SCHOOLING.

Subscribed before me in the presence of the attorneys for the respective parties October 29th, 1883.

N. SODERBERG,
Special Examiner.

THOS. HYMERS, called for the defendants, sworn and examined.

Direct examination by Mr. DEAL:

—. What is your name, age, and place of residence?

A. My name is T. K. Hymers; age, 50 years; residence, Reno, Nevada.

Q. Were you a member of the firm doing business here as livery stable keepers under the name of Hymers & Comstock?

481 A. I was.

Q. Did that firm furnish teams—anything of that sort—to the Nevada and Oregon railroad?

A. Yes, sir.

Q. When?

A. For two years, different times. I don't recollect the dates now.

Q. What was the amount of the bill?

A. $469.00.

Q. In the answer in this action you allege that Chas. T. Bender, as trustee for Hymers and Comstock, holds one of said bonds to the extent of $586.25; is that correct?

A. I believe it is.

Q. When was that delivered to Mr. Bender?
A. I don't recollect. My partner does the business.
Q. Do you remember it was at the time the meeting was held January 31st, 1881?
A. It was at that time; was so stated to me.
Q. Does he still hold that bond?
A. Yes, sir.

End of direct examination.

Cross-examination of T. K. HYMERS by Mr. CLARKE:

Q. What was the character of the livery?
A. Some team-work, some buggies—different things. We did some team-work.
Q. In the construction of the road?
482 A. Yes; hauled men out there.
Q. Well, was that done during the time that Moore was contractor?
A. I think it was.
Q. To whom did you charge?
A. To the company.
Q. Not to Moore?
A. Never made a charge against Moore. It was the surveyors.
Q. This livery was furnished for the company and not for Moore. The company had the benefit?
A. There was once that Moore had a team, but it was charged to the company. We never had any account with Moore; all charged to the company.

Mr. Deal here offers in evidence on behalf of the defendants a copy of the judgment in the case of A. J. Hatch against The Nevada and Oregon Railroad Company; also a certified copy of the judgment docket in that case; also a copy of the mortgage to the Union Trust Company, described in the bill of complaint in this action. Said documents are attached to the testimony for defendants and marked exhibits.

End of testimony of T. K. Hymers.

I have carefully read over the foregoing blank pages of my direct and cross examination and corrected the same, and the same is correct.

T. K. HYMERS.

483 Subscribed before me in the presence of the attorneys for the respective parties this — day of October, 1883.

N. SODERBERG,
Special Examiner.

WILLIAM WEBSTER, called for the defendants, sworn and examined.

Direct examination by Mr. DEAL:

Question. Judge, do you know Frank Field Fowler?

A. I do.

Q. Did you ever, as counsel for the Nevada and Oregon railroad or otherwise, advise him in any shape or form to take the seal of the Nevada and Oregon Railroad Company and put impressions of the seal on paper or any other thing and use it for any purpose whatever?

A. I never did.

Q. Did you ever counsel him to do so or did he ever ask your advice on the subject?

A. I did not counsel him to do anything of that kind nor did he ask my advice on the subject, but it was spoken of in the office one evening. Mr. Fowler was sitting there with his back to that window and I was over here. There was another gentleman with Fowler. There was mention made of certain writings required to be made and executed in New York, and I suggested that it
484 would be almost impossible to do anything of that kind there in New York for the reason that the seal of the company was here. There was some discussion about taking the seal to New York, and I suggested that could not very well be done, because the seal might be needed here. He then mentioned the fact that he had in his own possession certain impressions that he had taken from the seal and those he proposed to take with him and use.

Q. Did he ever ask or seek your advice about his right to do anything of that kind?

A. I don't think he did. I told him then I did not think that kind of work was just the thing for the execution of documents. There was a reply made by him it would not be known; it would have the same appearance, or something to that effect. That was all there was of it.

I have read over and corrected the foregoing pages of my testimony, and the same as so corrected is correct.

WM. WEBSTER.

Subscribed in the presence of the attorneys for complainants and defendants before me this 29th day of October, 1883.

N. SODERBERG,
Special Examiner.

485 DAVID EVANS, called for the defendants, sworn, testified as follows:

Direct examination — Mr. WEBSTER:

Q. What is your name, age, and residence?

A. My name is David Evans; my age is 52 years past; residence, Sierra county, California.

Q. Have you ever had any business with the Nevada and Oregon railroad?

A. I have.

Q. Did you ever have any claims or demands against that company?

A. Well, I sold the contractor, Mr. Moore, beef, hay, and grain; boarded some of the company's men when they were surveying the road.

Q. Boarded the company's men when they were surveying the road?

A. Yes, sir.

Q. How much did your demand amount to against the company for that board while they were surveying?

A. I could not say without my books. I could not tell what the different claims amounted to.

Q. Do you remember the aggregate amount of those bills?

A. No; I do not. All of the bills I have against them is not rendered to the company.

Q. I see one of the bills for teams furnished Thomas Moore,
486 late contractor for the Nevada and Oregon Railroad Company, during the year 1882, and for beef furnished during the same period to the said Thomas Moore amounts to $1,440?

A. I think that is about it, but it should be 1881.

Q. Here is another: "Nevada and Oregon Railroad Company, debtor to D. Evans for 25 days' board, $21.05. J. H. Raga, debtor to D. Evans, 15 days' board, 13 dollars." Are these all the bills?

A. No; I have a voucher or two from McClellan.

Q. Are these all the bills that you presented to the railroad Co.?

A. Yes, sir.

Q. How much is the aggregate; do you know?

A. No; I don't.

Q. You say, then, the bills will show?

A. Yes, sir.

Here Mr. Webster offers the bills, which were as follows:

ONEIDA, *Dec.* 21*st*, 1882.

N. — O. R. R., Dr. to D. Evans for 25 days' board $21 50

ONEIDA, *Dec.* 21*st*, 1882.

J. H. Reaga, Dr. to D. Evans for fifteen days' board $13 00

ONEIDA, CAL., *Nov.* 13*th*, 1882.

N. & O. R. R. Co. in ac. with D. Evans.

	Oct. 19.	To bill rendered				$126 80
487	" 23.	" 212	lbs.	tallow		12 72
	" 24.	" 126	"	beef, @ 10c.		12 60
	" 26.	" 125	"	" " "		12 50
	" 29.	" 125	"	" " "		12 50
						177 12

ONEIDA, CAL., *Oct. 19th*, 1882.

N. & O. R. R. Co. in ac. with D. Evans.

Sept. 7.	110 lbs. beef, @ 10c.	$11 00
" 8.	140 " " " "	14 00
" 10.	130 " " " "	13 00
" 13.	120 " " " "	12 00
" 17.	205 " " " "	20 50
" 19.	105 " " " "	10 50
" 20.	135 " " " "	13 50
"	Hay and grain	1 50
" 23.	120 lbs. beef, @ 10c.	12 00
" 26.	100 " " " "	10 00
" 28.	100 " " " "	10 00
" 30.	140 " " " "	14 00
Oct. 3.	128 " " " "	12 80
" 6.	135 " " " "	13 50
" 9.	45 " mutton, @ 10c.	4 50
" 13.	120 " beef, @ 10c.	12 00
" 16.	80 " mutton, @ 10c.	8 00
" 17.	Horseshoeing	2 50
" "	Repairing car	2 50
" "	Sharpening chisels	1 00
" 19.	150 lbs. beef, @ 10c.	15 00
		226 80
488	By cash from D. J. Sullivan	100 00
	Amount due Oct. 19th, 1882	126 80
		50 32
		13 00
	Credit cash, 10	21 50
	Freight, 41	211 62
		51
		160 62

Nevada and Oregon Railroad Company to D. Evans, Dr.

—— —, 1883.

To teams furnished Thomas Moore, late contractor for the Nevada and Oregon railroad, during the year 1882, and for beef furnished during the same period to the said Thomas Moore..... 1,440 00.

Q. Here is a claim that is put in—Reagan, $13. How does that happen to be presented as part of your claim against the company?

A. This is a man I boarded for the company.

Q. N. — O. R. R., Dr. to D. Evans for 25 days' board, $21.50.

A. That was for some men I boarded for the company and that worked for the company.

Q. Here is N. & O. R. R. Co., bill rendered, $126.80. Do you know what that was?

489 A. No, I don't. Supplies or something I furnished them; beef, hay, and grain.

Q. Was it furnished to Moore or the company?

A. I think it was furnished to the company.

Q. The bill of $126.80 was furnished to the company?

A. Yes, sir.

Q. Here is October 23, to tallow, 212 lbs., $12.79.

A. That was the company.

Q. Here is 126 pounds of beef, Oct. 24, $12.60.

A. That was the company.

Q. Oct. 26, 125 lbs. of beef, $12.50.

A. That is — company.

Q. This $177.12 bill here was all furnished to the company?

A. All that '82 bill is for the company; all the bills of 1882 was furnished to the company.

Q. It appears, then, you furnished the company, in 1882, $461.42?

A. I suppose so; the bills will show.

Q. On that amount there was credits to the amount of $151, leaving $161.49 against the company?

—. ——.

Q. This $1,440 that is presented against Moore, was that allowed by the company?

A. Yes, sir.

Q. What have you received from the company in allowing this $1,440 and this $161.42?

A. I have received bonds from the company.

Q. How many bonds did you receive?

A. Two.

490 Q. At what price?

A. Well, the calculation was about 80 cts. on the dollar; the bonds were $1,000 each.

Q. When did you receive those bonds?

A. I can't recollect the date. I think some time in February or March.

Q. This year?

A. This year. I could not tell the time exactly; the bonds will show.

Q. How did you come to extend to Moore credit for this $1,440?

A. I extended the credit with the expectation that there was a company back of it, backing Moore up.

Q. Upon the faith of the company?

A. Certainly; without the company back of him I would not have trusted him.

Q. Did you have any understanding with the company that you were to receive your pay?

A. Not when I made the contract; since that time I have an understanding with Mr. Balch, the president.

Q. How came it that the company issued to you bonds to the

amount of this $1,440; how did you come to receive bonds for that $1,440; under what circumstances?

A. I received it for the supplies.

Q. How did it come that the company paid this debt?

491 A. I don't know exactly how to answer that question.

Q. Did you present the bill to the company?

A. I did.

Q. Well, what did you say—what understanding did you have with the company?

A. When I presented my bill to the company my understanding was they haden't any money, but they would give me these bonds.

Q. Did you give them any reason why you presented this bill?

A. No.

Q. To whom did you give this bill?

A. I gave this bill to Balch.

Q. What was the conversation between you and Balch at the time you handed him the bill?

A. Of course, I wanted money. I told him that I wanted my money, for the company to pay me the money; and he said the company hadn't any money that he could pay.

Q. Was there anything said about your extending credit to Moore on the faith of the company?

A. I told Balch if there had not been this company back of Moore I certainly would not have trusted him.

Q. Did you know anything about Moore being a contractor?

A. No, sir.

492 Q. Did you understand whether he was representing the company or not?

A. No, sir; I did not.

Q. What was your information on the matter?

A. My idea of the matter was that Moore represented the company. Of course, I charged all my bills to the Nevada and Oregon Railroad Company. I never charged anything to Moore, but when I made out my bill I made it out to Moore.

Q. The charges, as far as your books go, is against the Nevada and Oregon Railroad Company?

A. Yes.

Q. Is there anything on your books against Moore?

A. No.

Q. Then you really never furnished anything to Moore?

A. That is how I charged on my books.

Here the attorney for complainants moved to strike out what the witness says about charges on his books, because the books are not produced.

The WITNESS: My books is not posted, but just book's of original entry. Whenever I would deliver a quantity of beef on that day I would charge it to the Nevada and Oregon Company with the date—so much beef. That is the way I charged it.

Q. Did you ever have any account with Moore?

A. No; I had no account charges on my book to Thomas Moore.

Q. Anything you have charged was charged directly to the
493 Nevada and Oregon Railroad Company. How did you come to make out this bill to Moore?

A. Coogan or somebody that was managing his business when I made out the bill told me to make it out to Moore.

Q. And you did it at the request of Coogan?

A. Yes, sir.

Q. Who was Coogan?

A. Superintendent of construction, contractor on the road.

Q. Then you never knew Moore as a contractor?

A. No, sir; I did not. I do not know anything of Moore's relation with the company at all.

Q. And everything that you delivered to him was on the faith of the company and really to the company, as far as you are concerned?

A. Yes, sir.

Q. What was the consideration of these bonds?

A. It was for supplies.

Q. To these men?

A. Yes, sir; these accounts.

End of direct examination.

Cross-examination of DAVID EVANS by Mr. KING:

Question. Did anybody tell you how to charge these things you furnished?

A. No, sir.

Q. How came you to charge to Nevada and Oregon Railroad Company?

494 A. The Nevada and Oregon was building the road, and I supposed that was the way.

Q. You say you furnished Moore on the credit of the company?

A. Yes, sir.

Q. It was your idea that the company would pay Moore and Moore pay you?

A. My idea was, I was furnishing to the company; Moore did not buy anything for himself.

Q. If it was your idea that you were furnishing to the company, how came you to make out the bill against Moore upon the statement of Coogan?

A. He requested me to charge to Thomas Moore or told me when I made out my bill to make it out that way; Mr. Moore never told me anything about how to make out the bill against the company.

Q. Did not you know that the construction was being done under contract with Moore?

A. I have heard such talk. I did not know it.

Q. Had not you heard it before you furnished these goods that Moore was a contractor? *Q.* Did you not furnish these supplies to Moore as such supposed contractor?

A. No, I cannot say I did.

Q. Was it not your idea that they were furnished to Moore as contractor?

A. No, sir; I had an idea they were furnished to the railroad company, and so charged it. Certainly I would not have
495 furnished to a man I did not know anything about, and I did not know he had anything to do with paying for these things. I supposed the company would pay the bills. I charged all my bills to the railroad company.

Q. Did not you charge to Moore upon the theory that the company would pay Moore and he would pay you?

A. I did not know anything about that.

Q. I asked you if that was your theory.

A. No, sir; I could not say that I did.

Q. Did you never have any talk with Moore as to his relations with the company?

A. No, sir; I never did.

Q. Did he never tell you?

A. No, sir; he never did. I never had but very little talk with Moore.

Q. Did you ever have any talk with anybody about it before you furnished these supplies?

A. Moore was the only man I ever talked with.

Q. Did he tell you the supplies were furnished to the Nevada and Oregon Railroad Company?

A. I don't recollect what he told me about it. I don't think he told me anything about it.

Q. Is this the only bill you ever made out?

A. Yes, sir.

Q. Did you ever make out any bill that you did not present?

496 A. No, sir.

Q. Did you ever make a demand of Moore?

A. I never made a demand of Moore.

Q. Did you not answer Judge Webster that you credited Moore on the credit of the company?

A. Well, I credited Moore on the faith of the company.

Q. Then what do you mean by crediting Moore?

A. Well, supposing you came out there and Webster was building the railroad and wanted me to furnish beef, I would think I was furnishing Webster. I supposed I was furnishing to the company, and I so charged it on my book.

Q. What do you mean by saying you gave credit to Moore on the faith of the company?

A. I credited Moore the same as I would credit a man that would come along—supposing a man would come along—with a bunch of cattle to my place and tell me he wanted pasture for the cattle and he did not have money. I would say, All right; turn in your cattle, knowing that somebody owned the cattle and they would probably pay me.

Q. Do we understand, then, that you did give credit to Moore?

A. I could not say. I gave, directly, credit to Moore.

Q. Do you hold that Moore owes you or did owe you anything before they gave you these bonds?

497 A. No; I hold that the company owe me.

Q. How did you come to charge some things to the company that you say were delivered to Moore?

A. I said Mr. Coogan—he knew how I had it charged on my book to the company, and he told me not to make out the bill that way, but to make the bill out to Moore; he knew how it was charged.

Q. Why didn't you charge these other things to Moore?

A. Because in 1882 Moore was not on the road at all.

Q. Who was operating the road in 1882 when these bills were contracted?

A. Balch.

Q. This $1,440—was that in 1882?

A. Yes, sir; I have got an itemized bill.

Q. I thought you said Moore was not on the road; yet you charged his bill in 1882 to Moore?

A. There is an itemized bill that I gave the company.

Q. The date of that is 1882?

A. There must be some mistake about that.

Q. You did not make out that bill?

A. No, sir.

Q. I asked you whether the bill for $1,440 is not for items furnished in 1882?

A. No; that is for 1881; that $14.00 is.

Q. The bill shows for 1882?

A. That bill is not the bill I made out; I gave an itemized bill to the company.

498 Mr. WEBSTER: The bill of $1,440 showing upon its face to be against Thomas Moore, and also showing to be for the year 1882—was that bill rendered by you to the company?

A. No; that is not the bill I made out to the company, but that is the amount of the bill I made out to the company.

Q. Whose handwriting is that?

A. I don't know.

Q. That appears to be on a railroad blank?

A. It appears to be.

Q. Did you have a like blank to make out the bill on?

A. No.

Q. Is the year 1882 the correct date of the bill?

Objected to by attorney for complainants that he is contradicting the written bill without producing the writing in evidence.

A. No; that is not the correct date of that bill; I think that should be 1881.

Q. Whoever made out this bill made a mistake in the year?

A. Yes, sir.

Q. How was your bill made out that was presented to the company?

A. It was made out in regular bill form, with the date of every item and the amount.

Q. What year did that show?

499 Objected to by attorney for complainants as calling for evidence of the contents of the writing without showing the writing or accounting for it.

A. It shows 1881.
Q. And that should show 1881, if correct?
A. Yes, sir.

Here the further taking of testimony was adjourned till Oct. 29, at 8.30 p. m.

RENO, NEV., *Oct* 29—8.30 p. m.

DAVID EVANS recalled:

Objection having been made heretofore to certain testimony in regard to the books of David Evans, and the testimony having been continued for the purpose of obtaining his books, and David Evans now being present for the purpose of supplying the testimony before objected to, therefore David Evans with his books answers as follows:

I have the books with me that I have heretofore kept between myself and the N. & O. R. R. Co. The books show an account between me and said N. — O. R. R. Co. The account commences 24th Oct., 1881. The charge is made against the N. — O. R. R. The first charge is a load of hay. The amount is not carried out, but is included in other charges made in the aggregate for hay delivered at different camps on the N. — O. R. R. The charges are all made to the N. — O. R. R. I think the amount is $1,440. That corresponds with my books. That is for 1881. There is another account of 1882. The first
500 charge in 1882 is June 21, 205 lbs. of beef, $20.50. The bill for 1882, already in evidence, is correct. My board bill is not included in the above because it does not appear in my books. I cannot tell all the items of the 1882 bill that I delivered to the president of the N. — O. R. R. Co. for the reason I did not keep consecutive account of the items. All the charges were made against the N. & O. R. R. Co. Should I go through my whole book all the charges upon the book would appear against the N. &. O. R. R. Co. All the charges I have against the N. & O. R. R. Co. are correct, and amount to the sum in the bills charged as stated. I have carefully read over and corrected the foregoing pages of my testimony, and the same is correct.

DAVID EVANS.

Subscribed before me in the presence of the attorneys for defendants, the attorneys for complainants not appearing, this 29th day of October, A. D. 1883.

N. SODERBERG,
Special Examiner.

The foregoing was all the testimony in the case offered or admitted on behalf of the defendants, except the exhibits hereto attached. Each witness before giving testimony was sworn to testify to the truth, the whole truth, and nothing but the truth. Each witness

before subscribing his deposition was required by me to, and did, carefully read over and correct the same.

N. SODERBERG,
Special Examiner.

501 This indenture, made and entered into this 25th day of April, A. D. 1881, by and between the Nevada and Oregon Railroad Company, a railroad corporation duly incorporated and organized under and in pursuance of the laws of the State of Nevada, party of the first part, and the Union Trust Company of New York, party of the second part, witnesseth:

Whereas the said party of the first part desires to make and complete the construction and equipment of a proposed railroad running and to be run from a point at or near the town of Aurora, in the county of Esmeralda, in the State of Nevada, to a point in the State of California at or near the boundary line between said State of California and the State of Oregon, and where said boundary line between said States intersects the western shore of Goose Lake, running through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties of Sierra, Lassen, and Modoc, in the State of California, to a point in said county of Modoc, in said State, at or near the boundary line between said State and the State of Oregon, and where said boundary line between said States intersects the western shore of Goose Lake, a distance of about three hundred miles; and to that end the stockholders of said corporation, at a meeting thereof duly held, and the directors thereof, also at a meeting duly held, have authorized and directed the issue of its bonds to be secured by a first mortgage upon said road and its rolling stock, fixtures, and franchises, as now existing and which may hereafter be acquired, in manner
502 and form and with the conditions, provisos, covenants, and obligations hereafter set forth; said bonds to be substantially in the following form and containing the following terms, to wit:

STATE OF NEVADA.

First-Mortgage Gold 8 Per Cent. Bond.

Know all men by these presents that the Nevada and Oregon Railroad Company, a corporation duly incorporated under the laws of the State of Nevada, acknowledges itself to be indebted for moneys advanced to its use, and promises to pay to the holder hereof, one thousand dollars, in gold coin of the United States of America, of the present standard and weight, on the first day of June which will be in the year 1930, at the city of New York, with interest thereon at the rate of eight per cent. per annum, and to be paid semi-annually, on the first days of June and December in each year, on the presentation of the annexed coupons, as they respectively become due, at the city of New York, in gold coin of the United States, of like standard and weight; for which payments, well and truly to be made, the said corporation binds itself and its successors, and doth

hereby further agree that this obligation and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, and hereby waives all benefit or exception of advantage which it is or may be entitled to from valuation, appraisement, attachment, redemption, or stay laws.

And it is hereby expressly agreed that, should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as aforesaid, and should the same remain unpaid and in arrear for the space of six months, then and from thenceforth—that is to say, after the expiration
503 of the said six months—the aforesaid principal sum of one thousand dollars, with all arrearages of interest thereon, shall, at the option of the holder hereof or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment of said principal may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

This bond is one of a series of three thousand of like amount, date, tenor, and effect, numbered from 1 to 3,000, inclusive, amounting in the aggregate to three million dollars ($3,000,000), secured by deed of trust or mortgage to the Union Trust Company of New York, as trustee, bearing date the 25th day of April, eighteen hundred and eighty-one, on all the estate, real and personal, and franchise then owned and to be thereafter acquired, in the States of Nevada and California, by said corporation.

This bond shall have no force or effect until certified by the trustee to be one of the bonds secured by the said mortgage.

In testimony whereof the said corporation has hereunto caused to be affixed its corporate seal and these presents to be subscribed by its president and treasurer this 25th day of April, in the year one thousand eight hundred and eighty-one.

Coupons for interest to be attached to said bond substantially in the following form to wit:

On the first day of ——, one thousand —— hundred and ——, the Nevada and Oregon Railroad Company will pay the bearer, at the city of New York, forty dollars in United States gold coin, of the present standard and weight, for six months' interest on bond No.—.

April 25th, 1881.

—— ——, *Treasurer.*

504 Now, therefore, this indenture witnesseth: That the said Nevada and Oregon Railroad Company, party hereto of the first part, for the better security of the payment of the said sums of money mentioned in the said bonds or obligations and said interest thereon and coupons thereto attached, according to the true intent and meaning hereof, and also for and in consideration of the sum of one dollar to it in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, assigned, released, conveyed, and confirmed, and by these presents

does grant, bargain, sell, alien, release, convey, and confirm, unto the party of the second part and to its successors and assigns forever all the following property, franchise, and estate, real and personal, now or hereafter constructed, purchased, acquired, held in possession, or owned by said company, to wit: All the railroad line of the said company, commencing at or near the town of Aurora, in the State Nevada, and running thence to a point in the State of California at or near the boundary line between said State of California and the State of Oregon and where said boundary line between said States intersects the eastern shore of Goose Lake, and extending through the counties of Esmeralda, Douglas, Ormsby, Washoe, and Roop, in the State of Nevada; thence into and through the counties of Sierra, Lassen, and Modoc, in the State of California, a distance of three hundred miles, as near as may be, including all the lands and estate, real and personal, rights of way, roadway, track and tracks, together with all the superstructures, depots, depot grounds, station-houses, water-tanks, workshops machine shops, machinery, side tracks, turn-outs,
505 turn-tables, weighing scales, locomotives, tenders, cars, rolling stock of all kinds, fuel, equipments, fixtures, tools, and all other property which may be necessarily used or ordinarily used in operating or repairing said railroad or anything connected therewith, including all of the said property which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said company pertaining to said railroad, and all the corporate rights, privileges, and franchises of said company pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interest, estate, property, possession, claim, and demand, in law or in equity, of the said party of the first part of, in, and to the same or any part or parcel thereof; to have and to hold the above granted and described premises, estate, property, and franchises, with the appurtenances, unto the said party of the second part and to its successors and assigns in trust for the use, security, and benefit of every person or corporation who shall become or be from time to time holders of said bonds and coupons or any of them; provided always, nevertheless, and these presents are upon the express condition, that if the said party of the first part or its successors shall well and truly pay, or cause or procure to be paid, unto the holders from time to time of said bonds and coupons and each and every one of them the said sums of money to be paid by the said bonds and the interest coupons attached thereto at the place and time and in the manner set forth in the said bonds and coupons according to the tenor,
506 intent, and meaning thereof, then these presents and all the property, estate, right, franchises, and privileges herein and hereby granted and conveyed shall cease, determine, and be void.

And if default shall be made in the payment of the said sums of money specified in said bonds or coupons or any part thereof, and if the same shall remain unpaid for the period of six months from

and after the time when the same should have been paid according to the terms of said bonds or coupons, then the said party of the second part, its successors and assigns, its agents or servants in that behalf, may enter into and upon and take possession of all or, in their discretion, any part of the said premises and property hereinbefore described or intended so to be, and work and operate the said railroad and receive the income and receipts and profits thereof, and out of the same pay—

First. The expenses of running and operating the same, including all taxes and annual legal charges, and including therein such reasonable compensation as it or they may allow to the several persons employed and engaged in the running and superintendence of the same, and a reasonable compensation to the party of the second part, its successors and assigns.

Second. The expenses of repairing and renewing the said road, appurtenances, locomotives, and the rolling stock thereof, and all other reasonable and proper charges and expenses necessary for the care and management thereof, including all reasonable and proper betterments, replacements, additions, and extensions.

507 Third. To pay, as far as the same will suffice, the interest and, when due, the principal of said bonds.

But nothing hereinbefore or hereinafter contained shall be construed to deprive the said party of the second part or its successors of the right to foreclose this mortgage by sale, as hereinafter provided, or by proceedings in any court of competent jurisdiction.

And, further, if default shall be made in the payment of the said bonds and coupons above mentioned or any of them that then and from thenceforth it shall be lawful for the said party of the second part, its successors and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and with or without such entry to sell and dispose of the same and all benefit and equity of redemption of the said party of the first part therein at public auction, and, as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bonds and coupons, together with the costs and charges of advertisement and sale of the said premises and a reasonable compensation, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said party of the first part and against all other persons claiming or to claim the premises or any part thereof by, from, or under it.

508 But, on any such sale, whoever shall bid off and become the owner of the said premises or any part thereof may be allowed to make payment therefor by the aforesaid bonds and coupons at a *pro rata* valuation, regulated by the net amount of the price which shall be realized on such sale, less such an amount of cash, however, as the said party of the second part or its successors

or assigns shall require to be paid in view of being able to convey a good title, free of all incumbrances, charges, and expenses, and for their own commission and charges.

And it is hereby agreed between the parties to this indenture that in the meantime, and until default shall be made in the payment of the interest or principal of the said bonds or coupons or of some of them or some part thereof, or in some of the covenants or agreements to be kept, observed, or fulfilled by the said party of the first part, it shall be lawful for the said party of the first part peacefully and quietly to have, hold, use, possess, and enjoy the said premises, with the appurtenances, and to receive the incomes, issues, and profits thereof to its own use and benefit, without any hindrance or interruption or disturbance whatsoever of or from the party of the second part, its successors or assigns, or any other person whatever lawfully claiming or to claim the same by, from, or under them or any of them.

And the said party of the first part hereby agrees and covenants to and with the said party of the second part and its successors and assigns that it will pay and keep down all ordinary and extraordinary taxes, assessments, and other public burdens and charges
509 which shall or may be imposed upon the premises herein described and hereby conveyed and every part thereof; and the said party of the second part or its successors and assigns or any one or more of the holders of said bonds may, in case of the default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge or lien thereon prior to the said bonds or to which said bonds may be subject or subordinate, and for all payments thus made the parties making the same shall be allowed interest thereon at the rate of eight per cent. per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents and declared to be payable and collectable in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said party of the second part, its successors and assigns, upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said premises hereinbefore authorized.

And the said party of the first part further covenants and agrees to and with the said party of the second part and its successors and assigns that it will at any and all times hereafter, upon the request of the said party of the second part or its successors and assigns, execute, acknowledge, and deliver to the said party of the second part and its successors and assigns all and every such further necessary and reasonable conveyances and assurances in the law of the
510 said premises or any part thereof as may by the party of the second part or its successors and assigns be reasonably devised or required for more fully carrying into effect the objects of this conveyance; and the said party of the second part and its successors and assigns shall be entitled to receive a just and proper

compensation for all services rendered by them in the execution of the aforesaid trusts and powers, and the same shall be deemed to be secured thereby.

And it is hereby stipulated and agreed that the said party of the second part and its successors in said trust shall not be responsible for the acts or omissions of any agent or agents employed by it in any manner in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion.

And it is further witnessed by these presents that the said party of the first part, its successors or successor, in consideration of the premises and the value received on the issue of said bonds, covenants to and hereby does waive all benefit or exception of advantage which it is or at any time hereafter may become entitled to from valuation, appraisement, attachment, redemption, or stay laws of any and all kinds.

In witness whereof the said Nevada and Oregon Railroad Company has hereto affixed its corporate seal and caused these presents to be attested by its president and secretary, and the said party of the second part has caused its seal to be affixed and these presents to be signed by its president the day and year above written.

511 NEVADA AND OREGON RAILROAD COMPANY,
By GEORGE L. WOODS, *President*,
[SEAL.] By S. C. SCOVILLE, *Secretary*.
UNION TRUST COMPANY OF NEW YORK,
[SEAL.] By EDW'D KING, *President*.

Signed, sealed, and delivered in the presence of—
W. BERGMAN AND
H. A. CLAUSON.

STATE OF NEVADA, } ss:
County of Washoe, }

On this second day of May, A. D. one thousand eight hundred and eighty-one, personally appeared before me, H. L. Fish, a notary public in and for the county of Washoe and State of Nevada, George L. Woods, president, and S. C. Scoville, secretary, of the Nevada and Oregon Railroad Company, a corporation incorporated, to wit, on the 25th day of April, 1881, to me personally known to be the persons whose names are subscribed to the foregoing instrument as the president and secretary of said company, who each acknowledged to me that he executed the same in his official capacity for and on behalf and in the name of said company as its free and voluntary act and deed for the uses and purposes therein mentioned and in pursuance of a resolution of the board of directors of said company directing such mortgage to be executed by signing the same as president and secretary and affixing thereto its corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] H. L. FISH,
Notary Public.

512 STATE OF NEVADA, *ss:*

SECRETARY'S OFFICE.

I, Jasper Babcock, secretary of state of the State of Nevada, do hereby certify that H. L. Fish now is a notary public in and for the county of Washoe, in the State aforesaid, duly commissioned and qualified according to law and duly authorized by law to take and certify acknowledgments and affidavits, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the great seal of State.

Done at office, in Carson City, Nevada, on this second day of March, A. D. 1881.

[SEAL.] JASPER BABCOCK,
Secretary of State,
By JAS. G. CHESLEY, *Deputy.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, a commissioner duly appointed by the Governor of the State of Nevada to take acknowledgment and proof of deeds and other instruments to be recorded in said State of Nevada, do hereby certify that Edward King, president, who is personally known to me to be such officer and to be the identical person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as the president of the Union Trust Company of New York, he signed, sealed, and delivered the foregoing instrument with the corporate seal of said company thereto affixed as the free and voluntary act and deed of the said company for the uses and purposes
513 therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 10th day of May, A. D. 1881.

[SEAL.] CHARLES NETTLETON,
Commissioner for Nevada in New York,
117 *Broadway, N. Y. City.*

Recorded at request of S. C. Scoville. Filed May 19, A. D. 1881, at 45 min. past 10 p. m.

JNO. B. WILLIAMS,
County Recorder.

STATE OF NEVADA, }
County of Washoe, } *ss:*

I, John B. Williams, county recorder in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of the record of the original mortgage from the Nevada and Oregon Railroad Company to the Union Trust Company of New York as the same appears on pages 294, 295, 296, 297, 298, 299, 300, and 301, in Book G of Mortgages, records of Washoe county, Nevada, now in my charge.

Witness my hand and official seal, at Reno, Washoe county, Nevada, this 15th day of October, A. D. 1883.

[SEAL.] JNO. B. WILLIAMS,
County Recorder.

514 In Dist. Court, 2nd Jud. Dist., Washoe Co., Nevada.

A. J. HATCH, Pl'ff,
vs.
NEVADA AND OREGON RAILROAD COMPANY, a Corporation, D'f't.

This cause coming on regularly to be heard on Monday, the 10th day of April, 1882, before the court setting with a jury of twelve, duly impaneled and sworn to try the cause, the plaintiff appeared by C. S. Varian, Esq., and Messrs. Lindsay and Dickson, his attorneys, and the defendant appeared by W. E. F. Deal and Wm. Webster, Esqs., its attorneys; whereupon witnesses were sworn and examined for the plaintiff and defendant, and, after argument, the cause was submitted to the jury for its consideration, when, after due deliberation, the jury returned the following verdict, which was duly recorded:

In Dist. Court, 2nd Judicial Dist., Washoe County, State of Nevada.

A. J. HATCH, Pl'ff, *vs.* NEVADA AND OREGON R. R. Co., D'f't.

We, the jury in above-entitled cause, do find for the plaintiff in the sum of $13,926.79, with interest at the rate of 10 per cent.
515 per annum on the sum of $6,759.00 thereof from April 7th, 1881, and on the sum of $7,167.74 from March 16, '81, at the same rate, amounting to the sum of $1,458.88; total, $15,385.67.

Reno, April 12th, 1882.

JAS. H. KINKEAD, *Foreman.*

And at the same time the jury returned the following special interrogatory submitted to it, with its answers thereto:

A. J. HATCH *vs.* NEVADA & OREGON R. R. Co.

Special interrogatory to be answered by the jury, requested by pl'ff.

Was it understood and agreed between the d'f't and its grantor, the Nevada and Oregon Railroad Company, at the time the latter conveyed all its property, the deed of which conveyance has been introduced in evidence, that said defendant should, in consideration of such conveyance, assume and pay all the debts of its grantor?

Answer. Yes.

JAS. H. KINKEAD, *Foreman.*

Reno, April 12, '82.

Wherefore, in consideration of the law and the premises, it is considered, ordered, and adjudged that the plaintiff, A. J. Hatch, do have and recover of and from The Nevada and Oregon Railroad

516 Company, the defendant corporation herein, judgment for the sum of $13,926.74, principal, and the sum of $1,458.88, interest, together with interest on said principal sum of $13,926.74 from date hereof and until paid, at ten per centum per annum, and for his costs, taxed at $265.10.

Judgment entered April 13th, 1882.

STATE OF NEVADA, }
County of Washoe, } ss:

I, R. S. Osburn, county clerk and *ex officio* clerk of the second judicial district court, State of Nevada, in and for Washoe county, said court being a court of record, having a common-law jurisdiction and a clerk and a seal, do hereby certify that the foregoing is a full, true, and correct copy of the original judgment which now remains of record in my office, in Reno, in said county.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Reno, this 16th day of October, A. D. 1883.

[SEAL.] R. S. OSBURN, *Clerk*,
By W. L. KNOX, *Deputy*.

517 Endorsed: In the district court, seventh judicial district. A. J. Hatch, pl'ff, *vs.* Nevada & Oregon Railroad Company. Transcript of judgment.

Judgment debtor: Nevada and Oregon Railroad Company, a corporation.

Judgment creditor: A. J. Hatch.

Judgment:

Judgment	$13,926 79
Int.	1,458 88
Total	$15,385 67
	265 10
Total	$15,650 77

And with interest on said principal sum of $13,926.79 from date hereof until paid, at 10 per cent. per annum.

Time of entry: April 13th, 1882.

Where entered in judgment book: Book B, p'g's 602 and 603.

Appeals, when taken: ——.

Judgment of appellate court: ——.

Satisfaction of judgment, when entered: ——.

For value received, I hereby sell and assign this judgment against the Nevada and Oregon Railroad Company (a corporation) to the Anglo-California Bank (Limited), at San Francisco, Cal., this 1st day of June, A. D. 1882.

A. J. HATCH.

Attest: R. S. OSBURN, *Clerk*.

A. J. Hatch, plaintiff, *vs.* Nevada and Oregon R. R. Co. Register number 1916.

STATE OF NEVADA, }
County of Washoe, } *ss:*

CLERK'S OFFICE, DISTRICT COURT,
SEVENTH JUDICIAL DISTRICT.

This is to certify that the foregoing is a true, full, and correct transcript of the entries in the above-entitled cause, in the 2d jud. dist. court, now the 7th jud. dist., district of Nevada, as the same appears in the judgment docket kept at my office.

Attest my signature and the seal of the said court this 16th day of October, A. D. 1883.

[SEAL.]

R. S. OSBURN, *Clerk,*
By W. L. KNOX, *Deputy Clerk.*

518 *Opinion.*

In the Circuit Court of the United States, Ninth Circuit, District of Nevada. In Equity.

UNION TRUST COMPANY OF NEW YORK
v.
NEVADA AND OREGON RAILROAD COMPANY
and
MORAN BROTHERS OF NEW YORK
v.
MCMURRAY *et als.*, Defendants.

The above-entitled suits are submitted upon the same testimony. The first-entitled suit was brought in this court by the Union Trust Company of New York to foreclose a certain trust deed executed by the Nevada & Oregon Railroad Company to secure the payment of certain first-mortgage bonds (310 in number, of the denomination of $1,000 each) and coupons executed by said railroad company, in the payment of which default had been made. In that suit an interlocutory decree was entered August 7, 1883, final decree being reserved until the testimony should be taken and submitted in the two cases. The second suit was brought by complainants,
519 who are the owners of said 310 bonds, secured by said trust deed, foreclosed in the first-named suit. The object of this second suit is to have declared fraudulent and void, as against complainants, an issue of 147 bonds of said railroad company (of the value of $1,000 each) and claimed by respondents to be equally secured by said trust deed with the 310 bonds held by complainants.

The pleadings are somewhat voluminous. The bill alleges that on the twenty-fifth of April, 1881, said railroad company duly executed 3,000 bonds of the value of $1,000 each, bearing 8 per cent. interest, payable A. D. 1930, interest payable semi-annually, and, in default of payment of interest when due, the principal should become due at the option of the holder of the bonds. On the same

date said railroad company, to secure the payment of said bonds, duly executed to the Union Trust Company of New York, in trust for the bondholders, a mortgage upon its franchise and property in the State of Nevada. These bonds were to be of no validity until certified to by said trust company. The trust company certified to only 600 of these bonds. Of these bonds so certified, complainants purchased 310 for value, paying therefor, as shown by the testimony, $248,000. The bill further alleges that these bonds were so purchased by complainants on the distinct and positive agreement by said railroad company that no more than $10,000 of said bonds should be issued for each completed mile of said road, as the same should be built; that only 31 miles of said road were ever completed; that said railroad company wrongfully procured from said trust company the 290 bonds remaining from said 600 bonds so certified, and has in fraud of the rights of complainants wrongfully disposed of 147 of the same. The respondents deny that said railroad company ever made or entered into any agreement by which it was limited to an issue of bonds at the rate of $10,000 per mile of completed road, or at any limited rate whatever, and it alleges that respondents are *bona fide* purchasers of said 147 bonds, without notice, for value, and are entitled to all of the benefits arising to them as such.

In examining the testimony it will be well to avoid confusion to note these facts in reference to the date of the organization of the "Nevada & Oregon Railroad Company," the defendant in this action, and the organization of "The Nevada & Oregon Railroad Company," the predecessor in interest of said company defendant. The names of the companies are the same, excepting that the definite article "the" is not prefixed to the railroad company defendant in this suit. "The Nevada & Oregon Railroad Company" was organized in Nevada, on the first of June, 1880. Its object was to construct a railway 300 miles in length, more or less, with various branches. The proposed line of railway was divided into "divisions," with appropriate names for each division. The portion of the line extending from Reno to Beckwith Pass and northerly was called the "Reno Division," and is so named and called by witnesses in the testimony. On the twenty-sixth of August, 1880, this company entered into a contract with one Thomas Moore for the construction of the road. By that contract said company agreed "that fifty-year eight per cent. first-mortgage bonds to the extent only of $10,000 per mile and capital stock to the extent of only $20,000 per mile for the first 185 miles will be issued." In providing for making payments to Moore for the work when completed, said contract further provided for the payment to him of "$100,000 in lawful money and $310,000 in the first-mortgage bonds and $450,000 in the capital stock of said railroad stock for the Reno Division, as far as Beckwith Pass, being thirty miles, more or less."

On the fourth of December, 1880, said railroad company and said Moore entered into another contract in reference to building the road. This contract provided that the Reno Division should be first

constructed from Reno to Beckwith Pass, the company to pay at a certain prescribed rate should the distance exceed 31 miles.

Section 6 of this contract is as follows:

"The company shall deposit with a trustee in New York, on or before January 10, A. D. 1881, $10,000 in cash and the $450,000 stock, and on or before January 25, 1881, the $310,000 in first-mortgage bonds."

SEC. 7. "Nothing in this contract is to be construed as abating or impairing any portion of the contract of August 26, A. D. 1880, which is hereby extended in all matters not conflicting with the provisions of this instrument," etc.

SEC. 8. "The entire stock to be issued upon the line from Reno to the temporary terminus, as herein stated ('at a point near Beckwith Pass,' see section 1), shall be limited to $600,000 without reference to any excess in distance over 30 miles, and the first-mortgage bonds upon the same to $310,000."

On the same day, December 4, 1880, said company and said Moore entered into another contract, by which Moore was to construct 170 miles of said road from Beckwith Pass to the Oregon line, "on the same basis as agreed upon for the first thirty miles of said division," and the company agreed to pay therefor "a total of $500,000 in cash and $1,700,000 in first-mortgage bonds, the same being total issue upon said line, and $2,850,000 in the capital stock," the issue of first-mortgage bonds being at the rate of $10,000 per mile. On the first day of February, 1881, said Moore and said company entered into another contract, the company having failed to make payments, as stipulated in the former contract, for work done by Moore on this line from Reno to Beckwith Pass—these 31 miles.

Section 3 of this contract provided:

"The party of the second part is to deliver to the party of the first part the $450,000 of stock as soon as engrossed and certificates can be signed, and the $310,000 first-mortgage bonds as soon as engrossed and can be properly signed, and all on or before March 31st, proximo."

This contract was not to impair any former contracts made between the parties.

On the twenty-fifth day of April, 1881, the "Nevada & Oregon Railroad Company" was organized, the company defendant in this action. Its object was the same as that of "The Nevada & Oregon Railroad Company." It was the successor of the last-named corporation, and by transfer and assignment it succeeded to all its rights, property, franchises, and contracts, and debts also. By contract entered into with Moore on the twenty-sixth of April, 1881, the defendant corporation adopted, ratified, and confirmed all of the contracts hereinbefore mentioned, and renewed them in all respects with Moore. On the twenty-fourth of May, 1881, Moore and the defendant corporation extended for one year the contract entered into by Moore and "Nevada & Oregon Railroad Company" for the building of the 170 miles of road from Beckwith Pass to the Oregon line. Moore went on under these various contracts and graded 32 miles on the first section north from

Reno and commenced grading on the 170 miles running north from Beckwith Pass. He also laid about 17 miles of track from Reno northerly, and provided certain rolling stock and other materials. Moore became embarrassed, and on about November 16, 1881, abandoned his contracts and left the State. From that time forward the company assumed the management of the road and conducted its future operations as best it could. The company was in a very embarrassed condition. It was largely in debt and without money or resources of any kind to meet its liabilities. It had attempted to build and equip a railroad without first having provided any adequate means for so doing.

On the twenty-fifth of March, 1882, Moore, as party of the first part, the railroad company, defendant, of the second part, D. W. Balch, H. J. McMurray, A. H. Manning, W. F. Berry, and C. A. Bragg, of the third part, and Alvin Burt, as trustee, of the fourth part, entered into an agreement, the object of which was to adjust, as therein provided, the then unsettled business matters between Moore and the railroad company. This contract recognizes the fact that the railroad company had issued to Moore these 310 first-mortgage bonds; that he had negotiated them with Moran Bros., complainants in the second above-entitled suit; that he had been paid for 210 of said bonds by Moran Bros., and that they held the remaining of said bonds subject to contract with Moore, to be paid for as the road was completed. By this contract Moore surrendered his rights in these bonds for the benefit of the railroad company, which subsequently drew the money due upon them. Section 11 of this contract is as follows:

"The parties of the second and third part hereby covenant and agree for themselves and the other stockholders and for the creditors of the party of the first part as follows, viz: * * * (*b*) That no second mortgage shall be made, issued, or recorded upon said railroad or any portion thereof.

"That the issue of first-mortgage bonds thereon shall be limited to $10,000 per mile of completed road, or such an amount that the annual interest charge thereon shall not exceed $800 per mile of completed road, and also that the issue of capital stock of said company shall be limited to $20,000 per mile of said railroad."

Pursuant to this contract, on the twenty-sixth of April following, Moore and Moran Bros. join in a communication to Balch, as president of said railroad company, informing him of the terms upon which he can—as the road is completed—draw upon complainants for $75,000, the balance due upon these 100 bonds. These funds were so drawn and with them the road was completed the 31 miles. It should be noted that this contract of March 25, 1882, was entered into by Balch as president of, and on behalf of, said railroad company, pursuant to a resolution of the board of directors of said company adopted January 13, 1882, prior to his departure from Reno to New York for the purpose of endeavoring to effect a settlement of the business of the company. And this contract, if not formally ratified by the directors of the company by resolution adopted to that effect, was actually ratified by the company by its acting upon

it, carrying out to some extent, at least, its provisions, and accepting the benefits arising therefrom, and especially in drawing and using the balance due upon the 100 bonds paid by Moran Bros. after its execution. Now, all of these various contracts conclusively show this, that this railroad company, defendant, and its predecessor had repeatedly contracted with Moore and promised and held out to the public that upon no part of the line of its road should there be issued more than $10,000 in first-mortgage bonds for each mile of completed road. It was upon this condition and agreement that Moran Bros. purchased these bonds. Charles Moran, one of the complainants, testifies that the railroad company issued its circulars to that effect; that he saw them; that this limitation was the condition in the purchase of the bonds; that they would not have advanced $11,000 per mile upon the road. He is supported in this by the testimony of Moore, Fowler, and Balch, and by every contract in evidence executed either by the railroad company, defendant, or by its predecessor and subsequently ratified by the Nevada & Oregon Railroad Company; and this testimony is wholly uncontradicted.

Can we believe that these complainants did, or that any business man or firm would, make advances to this or any railroad company upon its first-mortgage bonds and no limit be fixed upon the amount of issue of such bonds? These various contracts in evidence were affirmed and reaffirmed by this railroad company, defendant, in every subsequent transaction wherever the issue of first-mortgage bonds is mentioned. The limitation upon the issue of first-mortgage bonds is the sole condition which gave the bonds value and made it possible to negotiate them, and whoever purchased any of these first-mortgage bonds upon the faith of this railroad company, as pledged in these contracts with Moore, limiting the amount of issue, is as much entitled to the benefit of those contracts in this respect as though they had been made with the purchaser himself. These contracts, though private as to Moore, inure to the benefit of all in privity with him in the purchase of any of those bonds upon
521 the faith of the company therein plighted. If this corporation, defendant, can now set those contracts aside, can absolve itself from its obligations, repeatedly affirmed, and especially so by its contract of March 25, 1882, and after it has drawn from complainants, Moran Bros., $75,000 by virtue of that contract—if this can be done is it not time that men cease to enter into contracts? The directors of this railroad company knew of these contracts—they were officially bound to know of them—and had affirmed all of them which were made prior to the organization of the corporation defendant. It is manifest from the evidence that they knew and realized that the issue of these first-mortgage bonds was limited to $10,000 per mile of completed road, and it cannot be seriously contested.

Moore abandoned his contracts and left the State in November, 1881. The company then undertook the management and completion of the 31 miles of road. The position of the directors was far from being a pleasant one. Many of them had advanced their en-

tire means to aid the company, with then but little prospect or hope of recovering their advances. The directors were importuned and harassed by creditors of the company on every side. Upon this point Balch, president of the company, testifies: "One time, I remember, we were in session and a lot of fellows came in there and wanted to hang us. That is the kind of talk we had." These 147 bonds had not then been issued; they were issued afterwards. Was it "that kind of talk" which finally caused them to be issued, and against the better judgment of the board of directors? From March 25, 1882, to November 20th following the board had been acting under the contract of date March 25, 1882, made between Moore, the company, Balch, and others and Burt, recognizing its obligations and accepting its benefits; but the affairs of the company grew no better during this time, and, on the twentieth of November, a resolution was adopted by the board directing the president of the company to draw these 290 bonds from the trust company and to negotiate them. It is not a matter of surprise that he found no sale for them for cash—no one who wished to part with his money for them. It cannot be contended under the evidence that any of these holders of these 147 bonds, respondents in this second suit, are, in any legal sense, innocent purchasers thereof for value. Not one of them was sold to any of said respondents for cash. Not a dollar changed hands upon their transfer. They were each and all of them issued to persons who held pre-existing claims or demands against the company or against the directors or against Moore, which had been assumed by the company, or for services rendered or to be rendered to the company. There is no conflict of testimony on this point. Some of the respondents merely hold them as security for debts due them from the persons to whom they were originally issued. The creditors of the company evidently took the bonds, as they were all the company had to give, and the company issued them with a liberal hand. I cannot but hold that this issue of these 147 bonds was and is wholly fraudulent and void as against Moran Bros., complainants in this second suit; and such is the judgment of the court thereon. To hold otherwise would be doing great wrong, not only to complainants, but to all persons who repose faith in the solemn contracts and obligations of men or corporations.

The legality of the issue of these 290 bonds and the disposal of these 147 of the same is the real matter to be determined in this suit. It is immaterial to complainants what might be the judgment of the court upon the action of the board of directors in auditing and allowing against the railroad company the various claims and demands, aggregating this large sum of $147,000. This subject is not properly before the court in this suit. The single issue here is, and in which both parties are alike interested, are the holders of any of these 147 bonds entitled to come in and share with Moran Bros., complainants, in the proceeds arising from the sale under the trust deed foreclosed in the first-entitled suit? The court has adjudged that they are not, at least not until complainants shall be paid the amounts due them, with interest and costs, from the proceeds arising from such sale. A large amount of testimony has been taken

upon this outside issue, but the court does not feel called upon to decide or consider this branch of the case.

The railroad company, defendant, or the stockholders therein might seek to avoid and set aside the action of the board of directors in assuming any or all of the claims and demands which were by the board of directors audited and allowed against the company, but the voice of the company is not heard in its own behalf in this case. The personal interest of the directors in this suit has risen superior to that of the company which they represent. A very large majority in amount of the claims audited and allowed by the board of directors, and for which these bonds were issued, were the personal claims and demands of the directors themselves, and embraced almost every conceivable demand. Should any one care to examine, in the light of the law, the action of this board of directors in the management of the affairs of the company the following authorities will be found applicable and instructive: Pierce, R. R., 36, 40; Field, Corp., §§ 162–167, 172–175, and notes; Perry, Trusts, 207, 814; City of San Diego *v.* S. D. & L. A. R. Co., 44 Cal., 106; Wilbur *v.* Lynde, 49 Cal., 290; Forbes *v.* McDonald, *Id.*, 98; Chamberlain *v.* P. W. G. Co., 54 Cal., 103; 1 Lead. Cas. Eq. (H. & W.), 208–222; Cumberland Coal Co. *v.* Sherman, 30 Barb., 553; Wardell *v.* Railroad Co., 103 U. S., 651.

Tested by these authorities the action of this board of directors would, in many respects, be subject to criticism at least.

Let final decrees be entered in each of the above-entitled cases in accordance with the opinion herein expressed.

March 29, 1884.

SABIN, *Judge.*

Endorsed: 444. Filed M'ch 29, 1884. T. J. Edwards, clerk.

522 In the Circuit Court of the United States for the Ninth Circuit, District of Nevada.

CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. MORAN, Copartners under the Name of Moran Brothers, Complainants,

v.

H. J. MCMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, William Henry, Charles Curtis, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Company; First National Bank of Reno; Oliver Lonkey and E. R. Smith, Copartners; W. E. F. Deal, William Webster, David Evans, A. Fraser, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Copartners; Charles T. Bender, Trustee; A. H. Manning and W. F. Berry, Copartners; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, William Wright, and The Nevada and Oregon Railroad Company, Defendants.

To the honorable the judge of said circuit court:

523 The defendants in the above-entitled cause respectfully pray an appeal to the Supreme Court of the United States from

the decree entered against them therein at the March term of this court, A. D. 1884.

H. J. McMURRAY,
JERRY SCHOOLING,
W. R. CHAMBERLAIN,
WILLIAM HENRY,
CHARLES CURTIS,
DAVID MARTIN, AND
H. W. BRAGG,
Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Company;
FIRST NATIONAL BANK OF RENO;
OLIVER LONKEY AND
E. R. SMITH,
Copartners;
W. E. F. DEAL,
WILLIAM WEBSTER,
DAVID EVANS,
A. FRASER,
CLAYTON BELKNAP,
R. L. FULTON,
THOMAS HYMERS, AND
P. B. COMSTOCK,
Copartners;
CHARLES T. BENDER, *Trustee.*
A. H. MANNING AND
W. F. BERRY,
Copartners;
JAMES F. LEWIS,
GEORGE A. DANA,
ROBERT H. LINDSAY,
A. A. WATKINS,
HOMER S. KING,
CATHERINE WINNIE,
WILLIAM WRIGHT, AND
THE NEVADA AND OREGON RAILROAD COMPANY,
Defendants,

By W. E. F. DEAL,
Their Solicitor and Counsel.

524 The appeal prayed in the foregoing petition is hereby allowed, with citation to issue on filing bond, duly approved, in the penal sum of five hundred dollars.

Dated March the 23d, A. D. 1886.

LORENZO SAWYER,
Circuit Judge.

Endorsed: U. S. circuit court, 9th circuit, district of Nevada. Charles Moran *et als. vs.* H. J. McMurray *et als.* Petition for appeal and allowance of the same. Filed March 25, 1886. T. J. Edwards, clerk. W. E. F. Deal, solicitor and counsel for petitioners, def'ts.

Know all men by these presents that we, Charles T. Bender, W. R. Chamberlain, A. H. Manning, Wm. Thompson, and George W. Mapes, of Reno, Washoe county, State of Nevada, and W. E. F. Deal, of Virginia City, in said State, do hereby bind ourselves and promise to pay Charles Moran, Daniel Comyn Moran, and Amide D. Moran the sum of one thousand dollars, lawful money of the United States, in which sum of $1,000.00 we are held and
525 firmly bound unto said Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under the name of Moran Brothers, — certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a session of the circuit court of the United States, ninth circuit, district of Nevada, in a suit depending in said court between Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under the name and style of Moran Brothers, complainants, and H. J. McMurray, Jerry Schooling, W. R. Chamberlain, William Henry, Charles Curtis, David Martin, and H. W. Bragg, copartners doing business in the firm name of Washoe Mill and Lumber Company; First National Bank of Reno; Oliver Lonkey and E. R. Smith, copartners; W. E. F. Deal, William
526 Webster, David Evans, A. Fraser, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, copartners; Charles T. Bender, trustee; A. H. Manning and W. F. Berry, copartners; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, William Wright, and The Nevada and Oregon Railroad Company, defendants, a final decree was rendered against the said defendants; and the said defendants having obtained the allowance of an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit and a citation, directed to the said Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under the name of Moran Brothers, said complainants, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said defendants shall prosecute said appeal to effect and answer all
527 damages and costs if the said defendants fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHAS. T. BENDER. [SEAL.]
W. R. CHAMBERLAIN. [SEAL.]
A. H. MANNING. [SEAL.]
W. E. F. DEAL. [SEAL.]
WM. THOMPSON. [SEAL.]
GEO. W. MAPES. [SEAL.]

Sealed and delivered in the presence of—
GEO. H. TAYLOR.

The foregoing bond approved March 24, 1886.

LORENZO SAWYER,
Circuit Judge.

Endorsed: U. S. circuit court, district of Nevada, 9th circuit. Charles Moran *et als. vs.* H. J. McMurray *et als.* Bond on appeal. Filed M'ch 26, 1886. T. J. Edwards, clerk.

Minutes of Court of Date March 26, 1886.

MORAN BROTHERS *v.* H. J. MCMURRAY *et als.*

528 Upon motion of Mr. Deal, solicitor for defendants, it is ordered that a record be made in the minutes of the court showing that the defendants have taken an appeal from the decree entered herein at the March term, 1884; that such appeal has been allowed; that the defendants have filed a bond on appeal, duly approved, and that a citation has been issued, directed to said complainants, citing them to appear at the next ensuing term of the United States Supreme Court, at Washington.

529 By the honorable Lorenzo Sawyer, one of the judges of the circuit court of the United States, ninth circuit, district of Nevada.

The United States of America to Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under name of Moran Brothers, Greeting:

Whereas H. J. McMurray, Jerry Schooling, W. R. Chamberlain, William Henry, Charles Curtis, David Martin, and H. W Bragg, copartners doing business in the firm name of Washoe Mill and Lumber Company; First National Bank of Reno; Oliver Lonkey and E. R. Smith, copartners; W. E. F. Deal, William Webster, David Evans, A. Fraser, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, copartners; Charles T. Bender, trustee; A. H. Manning and W. F. Berry, copartners; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer
530 S. King, Catherine Winnie, William Wright, and The Nevada and Oregon Railroad Company have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the ninth circuit, district of Nevada, made in favor of you, the said Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under the name of Moran Brothers, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 11th day of October next, the same being the second Monday of October, A. D. 1886, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city and county of San Francisco, in said ninth circuit, the 24th day of March, A. D. 1886.

LORENZO SAWYER,
Judge of the U. S. Circuit Court,
Ninth Circuit, District of Nevada.

531 [Endorsed:] Circuit court of the United States, ninth circuit, district of Nevada. H. J. McMurray *et als.*, appellants, *vs.* Charles Moran *et als.*, appellees. Citation. Filed M'ch 26, 1886. T. J. Edwards, clerk. W. E. F. Deal, solicitor & counsel of appellants.

532 In Circuit Court of the United States for the Ninth Circuit, District of Nevada.

H. J. McMURRAY, JERRY SCHOOLING, W. R. CHAMBERLAIN, WILLIAM Henry, Charles Curtis, David Martin, and H. W. Bragg, Copartners Doing Business in the Firm Name of Washoe Mill and Lumber Company; First National Bank of Reno; Oliver Lonkey and E. R. Smith, Copartners; W. E. F. Deal, William Webster, David Evans, A. Fraser, Clayton Belknap, R. L. Fulton, Thomas Hymers, and P. B. Comstock, Copartners; Charles T. Bender, Trustee; A H. Manning and W. F. Berry, Copartners; James F. Lewis, George A. Dana, Robert H. Lindsay, A. A. Watkins, Homer S. King, Catherine Winnie, and William Wright, and The Nevada and Oregon Railroad Company, Appellants,

vs.

533 CHARLES MORAN, DANIEL COMYN MORAN, and AMIDE D. Moran, Copartners under the Name of Moran Brothers, Appellees.

UNITED STATES OF AMERICA, }
District of Nevada, } *ss:*

W. E. F. Deal, being first duly sworn, saith that he is a citizen of the United States, over the age of 21 years, and competent to be a witness in any legal proceeding; that on the 26th day of March, A. D. 1886, he served the appeal and citation filed in this cause with the clerk of said circuit court of the United States for the ninth circuit, district of Nevada, on the above-named appellees by delivering to R. M. Clarke, Esq., solicitor and counsel for said appellees, at Carson City, State of Nevada, in said district, a true copy of said citation and by leaving a true copy of said appeal for each of said appellees in the clerk's office of the circuit court aforesaid on the date above named.

W. E. F. DEAL.

Subscribed and sworn to before me this 26th day of March, A. D. 1886.

T. J. EDWARDS,
Com'r & Clerk U. S. Cir. Court, 9th Cir. & Dist. Nevada.

534 [Endorsed:] U. S. circuit court, 9th circuit, district of Nevada. H. J. McMurray *et als.*, appellants, *vs.* Charles Moran *et als.*, appellees. Affidavit of service of citation and appeal. Filed M'ch 26th, A. D. 1886. T. J. Edwards, clerk.

535 DISTRICT OF NEVADA, *ss:*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

MORAN BROTHERS, Complainants,

v.

H. J. MCMURRAY *et als.*, Defendants.

I, T. J. Edwards, clerk of the circuit court of the United States for the ninth circuit and district of Nevada, do hereby certify that the foregoing 534 written and printed pages, numbered from 1 to 534, both inclusive, are a true and full copy of the enrolled papers and of all proceedings in the cause therein entitled.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at my office, in Carson City, Nevada, this 5th day of July, A. D. 1886, and of our Independence the one hundred and eleventh.

[Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.]

T. J. EDWARDS,
Clerk U. S. Cir. Court, Dist. of Nevada.

Endorsed on cover: Nevada C. C. U. S. No. 471. H. J. McMurray, Jerry Schooling, W. R. Chamberlain, William Henry, Charles Curtis, David Martin, and H. W. Bragg, copartners doing business in the firm name of the Washoe Mill & Lumber Company; The First National Bank of Reno, *et al.*, appellants, *vs.* Charles Moran, Daniel Comyn Moran, and Amide D. Moran, copartners under the name of Moran Brothers. Filed October 16, 1886.

No......

IN THE

SUPREME COURT

OF THE

UNITED STATES.

M. J. McMURRAY, et al.,

Appellants,

VS.

CHARLES MORAN, et al.,

Appellees.

Brief for Appellants.

W. E. F. DEAL,

Solicitor for Appellants.

Filed.....*1890.*

.....*Clerk.*

IN THE

SUPREME COURT

OF THE

UNITED STATES.

H. J. McMURRAY, et al.,
Appellants,

vs.

CHARLES MORAN, et al.,
Appellees.

Statement of the Case.

On the 25th day of April, 1881, the "Nevada and Oregon Railroad Company," a railroad corporation incorporated under the laws of Nevada, made and delivered to the Union Trust Company, of New York, its mortgage upon all its property in Nevada and California, to secure the payment of its first mortgage bonds,—three thousand in number,—amounting in the aggregate to $3,000,000.

These bonds were to be issued to build its road. There was no limitation in the bonds or mortgage as to the number or amount of bonds *per mile* to be issued to build the road.

The bonds were payable to the holder thereof, and each of the bonds set forth that it should have no force or effect until certified by the Trustee to be one of the bonds secured by the mortgage; but the bonds were limited to 3,000, to be numbered from 1 to 3,000, both inclusive.

[See Mortgage or Trust Deed, pp. 211 to 218, Transcript.]

One Thomas Moore, of Elizabeth, New Jersey, had, prior to this, made contracts with another Nevada railroad corporation to build its railroad, which was the same road as that, to build which the bonds here in question were issued. The only difference in the names of the two corporations is, that the maker of the bonds and the mortgage is "Nevada and Oregon Railroad Company," and the corporation with which Moore made the contracts mentioned, is "The Nevada and Oregon Railroad Company."

See mortgage, pp. 211 to 218 Transcript.
Testimony of Thomas Moore, p. 49.
Exhibit A, p. 62.
Exhibit B, p. 70.
Exhibit C, p. 73.
Exhibit D, p. 75.
Exhibit E, p. 77.

Exhibit F, p. 78.

By the contracts marked Exhibit E, p. 77, and Exhibit F, p. 78, Thomas Moore and the corporation montgageor, "Nevada and Oregon Railroad Company," bound themselves to perform the covenants and agreements of Exhibits A and B.

Thomas Moore received under his contracts three hundred and ten of the bonds and sold them to the Appellees for eighty cents on the dollar.

Testimony of Thomas Moore, p. 52.

Testimony of Thomas Moore, p. 57.

Moore failed to perform his contract to build the Reno division thirty-one miles, although he received all of the bonds he was entitled to receive, three hundred and ten.

Testimony of Thomas Moore, p. 58.

Moore left Nevada long before the thirty-one miles were finished. The agreement, Exhibit J, pp. 92 and 93, Transcript, between Appellees and Thomas Moore was made April 28, 1882, and the money, $75,000, which was authorized to be drawn by that agreement was to be drawn for the purpose of finishing the very thirty-one miles of road for the building of which the 310 bonds were issued.

Moore left Nevada about November 16th, 1881, and never returned. He had nearly completed the grading of the 31 miles of the Reno Division, but had laid but little over 10 miles of track.

D. W. Balch's testimony for Appellees, p. 124.

The Reno Division was then completed by the money, credit, labor, services and material furnished by Appellants.

D. W. Balch's testimony for Appellees, p. 125.

The 147 bonds, the validity of which is in question in this case, were issued to Appellants for the considerations set forth in the testimony. The corporation failed to pay the interest on its bonds, and an action to foreclose the mortgage was commenced by the Union Trust Company, Trustee named in the mortgage, against the mortgageor. Moran Brothers also commenced this action in the U. S. Circuit Court, Ninth Circuit, District of Nevada, to enjoin Appellants from assigning or transferring, or otherwise disposing of the 147 bonds, and praying for a decree that Appellants are not entitled to participate in or share in the money realized from the sale of the road in the foreclosure suit. The Appellants filed their answers, denying all that was material in the bill of complaint, and set up affirmative matter, constituting, if established, a complete defense to the action. A replication was put in by Appellees, and the cause was submitted to the Circuit Court for its decision upon the testimony set forth in the Transcript.

Judge Sabin, District Judge for Nevada, sitting as Judge of the Circuit Court, made his findings, and a decree was entered, adjudging that Appellees, Moran Brothers, were entitled to have their

310 bonds paid out of the proceeds of the sale of the mortgaged premises. and that the 147 bonds issued to Appellants were not issued, negotiated or sold to *bona fide* purchasers for value, but were issued without any valuable consideration paid at the time, and were issued contrary to and in violation of the agreements of the Railroad Company, made prior to the issuance of any of the bonds in question, which agreements were to the effect that no more than $10,000 of said bonds should be issued for each completed mile of said road, and were in excess of the bonds authorized by said agreement and said bonds, and none of them, are entitled to participate in or share the proceeds arising from the sale of the mortgaged premises, except as to the surplus remaining after the payment in full of the 310 bonds issued to Moran Brothers, and adjudging that Appellants were not entitled to have any of the 147 bonds issued to them paid out of such proceeds until after such payment in full of Moran Brothers' 310 bonds.

An appeal to this Court from this decree was allowed by the Honorable, the Circuit Judge for the Ninth Circuit, which appeal has been duly perfected.

The questions involved in this case are whether the 147 bonds, or any of them, issued to Appellants, were valid bonds, issued for valuable considerations under the mortgage, and whether the holders of these bonds are entitled to share in the pro-

ceeds of the foreclosure sale equally with the 310 bonds issued to Moran Brothers.

I.

The decree is erroneous, in adjudging that the 147 bonds mentioned in the answer were not issued, negotiated or sold to *bona fide* purchasers for value.

The bill of complaint alleged "that the said 290 bonds, and each of them, were issued and delivered by the said Railroad Company, and received by the said Respondents, and each of them, in security for and in payment of the debts and liabilities of one Thomas Moore, the contractor and builder of said railroad, and of certain other individuals, and were not issued or delivered in security for or payment of the debts or liabilities of the said Nevada and Oregon Railroad Company, wherefore your orators aver that the issuance of said 290 bonds, and each of them, was, as against your orators, illegal, fraudulent and void."

Transcript, p. 5, folio 14

These allegations were denied by the answer, p. 15, folio 43, Transcript.

Did the parties to whom the 147 bonds were issued pay good and valuable consideration for the bonds they received?

Appellants claim they did; that bonds were issued to pay the debts contracted by the Company in building the 31 miles of road; that they where is-

sued to secure the very debts provided for in the mortgage.

These were debts contracted either directly by the Company, or debts contracted by Moore which the Company assumed to pay, and which were in settlement with Moore to the extent of the debts paid by the bonds.

There can be no question in this case as to these bonds, except between the Company and the parties to whom the bonds were issued, whose debts were paid by them.

The Company contracted with Moore to build the 31 miles of road in consideration of the 310 bonds held by Complainants. He claimed that after he had received the 310 bonds that the Company was still indebted to him.

(See his testimony). p. 54.

The Company admitted its indebtness to Moore and agreed to pay it.

Exhibit G, p. 80, folios 212 and 213.

But whether the Claims were just or not the Company had the right to settle the claims by paying his debts after it had agreed to do so, and it did do so, and can in any action that Moore may bring against the Company, set up these payments as offsets against his demands.

The payment of Appellants' demands against Moore by the Company, under the circumstances, operated as assignments of their demands, and can

be successfully pleaded against any action that may be brought by Moore against the Company on account of his contracts.

Parson on Contracts, 1st vol., pp. 223, 228 and 229.

Could these parties who received the corporation bonds in payment of debts due by Moore to them, now recover those debts from Moore?

Mr. Balch testified that Moore claimed that the Company owed him, and the Company admitted it; that the Company assumed these debts by agreement with Moore, and that the bonds were issued pursuant to the agreement

Testimony of D. W. Balch.

He says, page 128 Complainants' testimony: folio 324 and 325.

Q.—Did the persons to whom these bonds were delivered (these 147 bonds) acknowledge to the Company full satisfaction of the claims to that extent, upon the delivery of the bonds to them?

A.—I so understood from Mr. Manning.

Q.—Don't you know that from the vouchers on file?

A.—Yes, sir; that was the agreement.

Q.—As a matter of fact, you, on behalf of the Company, agreed with Moore that the Company would assume these debts, and in pursuance of that agreement these debts were assumed and these parties accepted the bonds?

A.—It was understood that the Company was to pay it. That was a thing we could not decide on, but, finally, the Company was to pay them in some way,

Q.—Was not the assumption by the Company of these debts and the acceptance of the bonds by these parties of the Company on a settlement with Moore to the amount represented?

A.—It was.

Now Moore claimed that the Company owed him, and the Company admitted it did owe him on account of his contracts. Moore was willing to be paid by the payment of debts he owed, and the Company was willing to pay his demand in that way.

Whose business was it outside of these parties, Appellants, the Company and Moore, how these demands were adjusted? It was just as valid a settlement as if the bonds had been issued by the Company to Moore, to pay him, and Moore had handed over the bonds to these parties to pay them.

There was nothing in the mortgage against it, and there was no condition in any agreement between Moore and the Company, that these parties could not waive.

Moore's demand must have been for work provided for under the contracts, which the bonds, money and stock did not cover. If Moore was satisfied that the Company should pay him by settling with his creditors, and the creditors were satisfied,

there was nothing illegal, unjust or improper in the corporation setting with its bonds.

That was the very purpose for which the mortgage was made, and the bonds issued—to pay for the building of the road.

The question is, what did the Company owe Moore for?

There is no pretense that the Company owed Moore for anything, except for building the road. Moore had the right to direct his demand to be paid in bonds for any debt he owed, whether for lawyers' fees or for material used by him in the construction of the road, or anything else.

There was nothing illegal or wrong on the part of the Company in doing this.

Jones on R. R. Securities, § 208, p. 188.

It had made no contract that prevented it, and if the parties who received the bonds were content with the security of the mortgage, they were free to take the bonds.

For convenience of reference we give a list of the holders of the 147 bonds in dispute:

H. J. McMurray 56
W. R. Chamberlain... 4
First National Bank for Manning and Berry 28
Lonkey & Smith 4
Homer S. King 1
Catherine Winnie... 4

William Wright 13
A. Fraser 1
Charles T. Bender, as trustee for Clayton Belknap, to the extent of $437.50 of 1 bond; Trustee of R. L. Fulton to extent of $428 75 of 1; Trustee for W. E. F. Deal, to extent of $625 of 1; Trustee for Wm. Webster, to extent of $125 of 1; Trustee for Lonkey & Smith, to extent of $330 80 of 1; Trustee for Jerry Schooling, to extent of $354 65 of 1; Trustee for Manning and Berry, to extent of $526 37 of 1; Trustee for Hymers & Comstock, to extent of $586 25 of 1; 4
A. A. Watkins 13
James F. Lewis 2
Geo. H. Dana 3
Robert H. Lindsay, as attorney for A. J. Clark, Mrs. Agnes McLellan, adminstratrix of the estate of H. G. McLellan, deceased, and H. G. Parker 7
David Evans 2
Jerry Schooling 5

Total 147

Page 104, Complainants' testimony, folios 270 and 271. These bonds were all issued at 80 cents

on the dollar—the same price that Moran Brothers paid for their bonds.

Testimony of Thomas Moore, folio 153.

The debts for which these bonds were issued, were as follows:

56 bonds, issued to H. J. McMurray.

The considerations for which these bonds were issued were made up of the following items:

Amount of lien for iron furnished	$22,961 66
Interest on advances and on iron purchased	3,456 42
Balance due on Judgment obtained against Thomas Moore...	5,506 75
Cash furnished the Company at various times:	
Cash paid for Engineers and Taxes	1,600 00
Sheriff and law expenses	728 60
Expenses for telegraphing and freight on bonds	358 10
Cash to H. R. Porter & Co., of Pittsburg, for locomotive	937 50
Salary as Agent of Company, in San Francisco.	1,000 00
	$36,549 03
H. J. McMurray, assignee of D. W. Balch	8,000 00
	$44,549 03

Testimony of D. W. Balch for Moran Brothers, pp. 104, 105, 106, 107, 108, 125, 126.

It seems to us that there can be no question as to the validity of these 56 bonds. They were issued to H. J. McMurray after he resigned as Director of the Company, (folio 272). He had resigned May 16, 1882—nearly a year before the bonds were issued. Every dollar of this amount went into the construction of the 31 miles of road, either as materials, or cash, or as services.

The items of	$22,961 66
And interest.....	3,456 00
	$26,417 66

Were the cash paid out by H. J. McMurray for the rails that are now laid upon the road-bed to finish the road, and interest thereon. For this $22,961 66 for rails and freight, H. J. McMurray filed a lien upon the road, under the laws of Nevada, which lien he released upon the agreement by the Company to assume and pay the debt. (Folios 274, 275.)

Mr. Balch had full authority from the Company to make this arrangement, and the Company afterwards ratified his action.

The claim of $5,506 75 was a balance due upon a judgment against Thomas Moore. This judgment was for some $9,000 to $10,000 cash advanced to Moore by Balch and McMurray for the Company.

Page 106, Complainants' testimony.

$4,500 of this judgment was upon a claim held by Balch against Moore.

The money was sent by Balch to pay interest on the coupons on the bonds. Instead of using it in this way, Moore put the money in his pocket and sent Balch a receipt for the amount on his contract. (Folios 275¼, 275½.) Balch assigned this claim to McMurray, who sued Moore for it and got the judgment against him. This was one of Moore's debts which by the consent of Moore the Company assumed, and treated it as money paid to Moore on the contract; and the Company paid McMurray with its bonds. The debt so paid was a debt contracted in building the road, and the bonds were used for the very purpose for which they were issued. The next item was for $1,600, cash paid for services of the Civil Engineers and taxes—$1,000 for engineers and $600 for taxes.

These engineers were employed by the Company, and the services for which they were paid were for work in building the road; the taxes were a lien upon the road—were the debts of the Company, and the mortgage and bonds were subject to the payment of them.

Testimony of D. W. Balch for Moran Brothers, folios 276 and 319.

It was provided in Exhibit A, p. 64, 16th sub-division, that the Company should pay the engineers.

The next item was for Sheriff and Law expenses, $728 60. This item is composed of $128 60 Sheriff's fees. and $600 lawyers' fees. There were items charged against Moore and settled by Balch with Moore as so much on account of his contract.

The next item, $358 10, was for moneys paid out by H: J. McMurray for the Company as a Director while the Company was engaged in building the road. McMurray lived in San Francisco, and merely charged his fares to Reno.

The next item, $937 50, was advanced by McMurray for the Company to purchase a locomotive.

Transcript, p. 107.

The next item, $1,000, was for services as Agent of the Company in San Francisco. The services rendered were services required in building the road, rendered while McMurray was not a Director, and were just as much services in building the road as if McMurray had worked on the track.

Transcript, pp. 106, 107, 126, 127.

The next item, of $8,000, for which 10 bonds were issued, was for services, etc., of D. W. Balch. There were 10 bonds allowed Mr. Balch, one for $5,000, and one for $3,000, at 80 cents.

Transcript, pp. 108, 109, 110, 127.

The item of $5,000 was allowed for the services of Mr. Balch, and for cash paid out by him

while he was superintending the building of the road.

All of this service was rendered directly to the Company, and every moment of Mr. Balch's time was devoted, for the period covered. to the building of the road.

The services of Mr. Balch were nôt for any salary or compensation as Director, but for his superintending the building of the road.

Moore had deserted the enterprise, and the actual work of finishing the 31 miles devolved upon Mr. Balch. The bill was allowed for building the road, for the very thing that the bonds and the mortgage were executed. This was a legal charge against the Company, for which it was liable to Mr. Balch, and his position as President did not make it improper that the Company should so employ and pay him.

Angell and Ames on Corp., sec. 317, p. 316.

Rosbrough vs. Shasta R. Co., 22 Cal., 562.

St. Louis F. S. and W. R. Co., vs. Tiernan, 15 Pac. R., 533.

Angell & Ames on Corporations, Sec. 317 and 318.

Citizens' Nat. Bank vs. Elliott, 55 Iowa, 106, 107.

Cheeney vs. L. B. & W. R. R. Co., 68 Ill., 570.

Chandler vs. Monmouth Bank, 1 Green., N. J., 260.

Santa Clara M. Co. vs. Meredith, 49 Md, 389.

The contract, Exhibit A, p. 65, folio 173, provides that the work should be done under the supervision of the President.

The balance of $3,000 to Mr. Balch was additional compensation. That is all, except a small amount for the same services. Mr. Balch was not satisfied with the amount allowed him, and the Company then allowed him the additional $3,000.

There was no question raised as to the reasonableness of this compensation. If it had been paid in cash it would not have been too much.

It is no exaggeration to say that without the services and labor of Mr. Balch upon this road, the bonds would not be worth the one-tenth of the cost of these proceedings to foreclose the mortgage and sell the property. It is doubtful if Moran Brothers would have gone to the expense of foreclosure but for the services of Mr. Balch.

When Thomas Moore quit the enterprise and left the road not half completed, the Company was a financial wreck. It had no credit and the laborers were clamoring for the blood of the Directors.

Mr. Balch, as soon as he recovered from the wounds he received in attempting to defend the Company's rights, put all his energy and the credit of himself and his friends into the concern, and by making promises to the creditors of the Company,

which the Company authorized him to make, he obtained the means through these Appellants to finish the 31 miles of road.

Transcript, p. 110.

There is nothing in any of the decisions which prohibits a Director from dealing with the Corporation. A Director may loan money to it, or contract with it for his services, and may recover for such loans or services.

The only obligation upon a Director is that he must act honestly and fairly. He must not take advantage of his position to benefit by it, as against other creditors, but he has the right to recover the money he has loaned and to receive a reasonable compensation for his services, as others have.

Morritz on Private Corporations, vol. I, sec. 527, p. 495.

Waterman on Private Corporations, vol. I, p. 424.

Santa Cruz R. R Co. vs. Spreckles, 65 Cal., 193.

Seeley vs. San Jose I. M. and M. Co., 59 Cal., 22.

Hartz vs. Brown, 77 Ill., 230.

Manufacturing Co. vs. Bradley, 105 U. S., 183.

Turn Lich Oil Co. vs. Marbury, 91 U. S., 588.

Salt Marsh vs. Spaulding, 15 Northeastern R., p. 319.

Holt vs. Bennett, 16 N. E., p. 146.

It is said that a Director cannot deal in the securities of the corporation at less than par, but that is in cases where others pay par for such securities.

There is no reason why a Director should pay more for the securities of the corporation than others do. The requirement is that he shall not buy them for less than others pay for them.

The rule has no applicability when the reason for the rule does not exist.

Claflin vs. South Carolina R. R. Co., 4 American and English R. R. Cases., 231.

Duncomb vs. N. Y. R. R. Co., 4 Am. and Eng. R. R. Cases., 293, and note, p. 306.

There is no allegation in the bill that there was any fraud in the issuance of any of these bonds to Appellants, for the reason that they were Officers, Directors or that they were, by reason of their relations with the Corporation, prohibited from dealing with it. And all evidence as to such facts was irrelevant and immaterial.

The 4 bonds held by W. R. Chamberlain were issued to George A. King in payment for the services of the latter as Secretary while the Company was building the 31 miles of the road.

They were given to Mr. Chamberlain as security for debt. He had no notice of any of the contracts in evidence.

(See his testimony), p. 183.

The 28 bonds issued to Charles T. Bender, as Trustee for Manning & Berry, were paid to that firm for materials and cash furnished, either to Thomas Moore or to the Company, to build the road.

The amount due Manning & Berry was $22,-811 10, which was made up of the following items:

Cash paid in various suits, in cases where Manning & Berry were sureties on attachment bonds....$	1,770 35
Balance due on judgment against Thomas Moore	11,963 70
Lease of rolling stock	2,400 00
Cash paid on note given in payment of judgment on bond to release attachment	5,050 00
Supplies to Company	1,627 05
Total ....$	22,811 10

Testimony of A. H. Manning, p. 159, *et s q.*
Testimony of D. W. Balch, p. 110, *et seq.*

Of these items, all except the balance of $11,963 70, were for debts due to Manning & Berry by the Company for cash paid to it, and advanced by them to the Company, for which it was solely responsible, and these payments were made to build the road.

The item of $1,750 35 was for cash paid out directly for the Company on account of various suits to recover debts incurred by the Company in building the road.

The item of $11,963 70 was for a balance due on a judgment recovered by Manning & Berry against Thomas Moore, which the Company assumed by consent of Moore and which it paid on account of what it owed Moore for building the road.

The next item of $2,400 was for a lease to the Company of rolling stock, used in building the road.

Folio 289, p 112.

The item of $5,050 was paid on a note given by Manning & Berry, on account of a judgment against them upon a bond given to release an attachment in a suit against the Company.

The judgment in the attachment suit was for $15,385 67, and the consideration for the indebtedness for which the judgment was rendered was a part of the consideration upon which the old Company conveyed its property to the new Company; the very property upon which the mortgage in evidence was given.

This judgment would have to be paid out of the property before any bond could be paid.

See judgment and special verdict in the judgment, at end of testimony. Folios 514 to 518

Mr. Balch in his testimony for Moran Brothers, p. 111, folio 287, explains this matter. A judgment was recovered against the first corporation by A. J Hatch. In that suit an attachment was issued against the corporation and Manning &

Berry were sureties on the attachment bond. After the judgment Manning & Berry were sued on the bond and judgment recovered against them. They paid this judgment and then assignee received bonds at 80 cents in settlement with the corporation mortgageor.

(See also testimony of A. H. Manning for Moran Brothers), p. 159.

The item of $1,627 05 was for supplies to the Company to build the road, after Moore left.

Every item allowed to Manning & Berry was a valid debt of the Company, contracted in building the road.

The 4 bonds issued to Lonkey & Smith were issued to pay for bridge timbers and ties sold by them directly to the Company, which were used in building the road. These parties had no notice of any of the contracts.

Appellants' testimony, folios 295-322.

Appellants' testimony, p. 171 to 175.

The fraction of a bond held by Charles T. Bender for these parties was upon the same consideration.

The 4 bonds held by Mrs. Winnie, and the 1 bond held by Homer S. King, were issued to W. E. F. Deal, and by him delivered to them as security without any notice on their part of any of these contracts.

The indebtedness upon which these 5 bonds

were issued was $4,500. Of this amount $1,000 was due by Moore on account of a retainer in the action brought by Moore to set aside 50,000 shares of stock issued by former Directors of the Company to themselves.

This debt was assumed by the Company and paid by Moore's direction, on account of his contracts.

See D. W. Balch's testimony for Appellees, folios 322, 323.

Testimony of W. E. F. Deal, for Appellees, p. 153 to 159.

The balance of $3,500 was for services rendered directly to the Company in actions brought during the building of the road, that are described by the various witnesses.

These were actions caused by the building of the road, which were brought by various persons to recover debts claimed to be due them for work, labor and services of various kinds.

The $3,500 was a debt incurred in building the road.

The 8 bonds held by William Wright were issued to William Webster for a debt of $6,500, of which $1,500 was due by Moore and assumed and paid by the Company, and $5,000 for services directly to the Company.

Page 128.

Testimony of Deal, pp. 156 and 157.

Testimony of Webster, p. 154.

The same remarks are true about these bonds as we have made about those issued to Deal, and the testimony cited as to the 5 bonds issued to Deal applies also to those issued to Webster; and the same is true as to the fractions of bonds held for these parties by Charles T. Bender, as Trustee.

Neither Mrs. Winnie, nor Mr. King, nor Mr. Wright, had any notice of any of the contracts in evidence.

The 1 bond issued to A. Fraser was for a debt due by the Company to him, incurred in building the road (p. 24, Complainants' testimony), and this is true of the fraction of the bond held by C. T. Bender as Trustee for Mr. Fraser.

A. Fraser's testimony, pp. 189 and 190.

Mr. Fraser had no notice of any of the contracts in evidence.

The other bonds held by Charles T. Bender, as Trustee for Clayton Belknap, R. L. Fulton, Hymers & Comstock, were all issued to pay debts of the Company.

Testimony of R. L. Fulton, p. 191.

Testimony of D. W. Balch, folio 323.

Testimony of Thos. K. Hymers, p. 200.

The fraction of 1 bond held by Charles T. Bender for Manning & Berry was for the same consideration as the other bonds issued to him for Manning & Berry.

The 13 bonds, issued to A. A. Watkins were

issued to them as assignees of Manning & Berry, for an amount paid by them for the Company on account of the Hatch judgment, annexed to Defendants' testimony. Manning & Berry paid this, and becoming embarrassed in their business, assigned their demand to A. A. Watkins. The amount for which these 13 bonds were issued was the balance paid by Manning & Berry, deducting the $5,050, for which Bender received bonds as Trustee for Manning & Berry.

This was a debt of the Company, as found by the verdict of the jury.

Folio 515, p. 218.

The 2 bonds issued to James F. Lewis, and the 3 bonds to George H. Dana, were delivered to them by direction of W. E. F. Deal, who was entitled to them for legal services. The bonds held by Lewis were sent in payment of an indebtedness due him by Deal, and the bonds held by Dana are held as security.

The 5 bonds held by William Wright were issued under similar circumstances for William Webster, and the same testimony applies to them as to the 5 issued for Deal.

None of these persons now holding these had any notice of the contracts.

Testimony of Deal, p. 155 *et seq.*

Testimony of Webster, p. 154.

The 7 bonds held by Robert H. Lindsay are

held by him for A. J. Clarke, Mrs. Agnes McLellan, administratrix, and J. H. Parker. They were received at less than 80 cents on the dollar.

The McLellan claim was directly against the Company, for a debt due the estate of H. J. Mc Lellan, deceased, for services rendered by the deceased and his brother in building the railroad.

The Clarke claim was against Moore, and was assumed by the Company and paid with these bonds. The debt was due for building the road.

The Parker claim was against Moore. He had a lien upon the road which was foreclosed, and the lien was for labor upon the road.

No question, it seems to us, can be raised against any of these bonds held by Mr. Lindsay.

All the claims were for work, etc, upon the road, and all the bonds were issued in payment of debts due by it, or for which it made itself liable.

Testimony for R. H. Lindsay, pp. 186–7–8.

The 2 bonds held by David Evans was for a debt contracted by Thomas Moore in building the road, but the credit given was to the Company.

The Company assumed and paid this debt with its bonds.

The items of the account were charged on the books of the Company, and were for matters furnished in building the road.

Evans had no notice of the contracts.

Evans' testimony, p. 202.

The 5 bonds issued to Jerry Schooling were issued to him as assignee of—

Washoe Mill and Lumber Company	$1,975 55
Washoe Mill and Lumber Company	1,103 16
Nevada Mill and Lumber Company	1,205 01
Total	$4,283 72

The fraction of 1 bond held by Charles T. Bender for this party was upon the same consideration.

The amount due to the Nevada Mill and Lumber Company was due by the Company for materials furnished directly to it, used in building the road.

Testimony of C. A. Bragg, p. 173-193.

Testimony of Jerry Schooling, p. 198.

The $1,975 was due by the Company to C. A. Bragg & Co., and by them assigned to the Washoe Mill and Lumber Company. This was due directly from the Company for material used in building the road

The same is true with reference to the item of $1,103 60.

Mr. Schooling had no notice of any of the contracts.

The principles of equity applicable to railroad

bonds and mortgages, to secure them, are clearly explained in the two cases cited, from the 4th volume of English and American railroad cases, one of which was decided by the late Chief Justice Waite, sitting as Circuit Judge, and the other was by the Court of Appeals of New York.

In the case of Claflin vs. South Carolina R. R. Co., *supra*, the Court say, with reference to the bonds held by a Director:

"As Mr. Williams took the bonds direct from the Company at a time when he was himself a Director, he is charged with notice of the facts. His lien, therefore, would not be good as against the second mortgage if the Company had not the power to use them as it did, and transfer a corresponding interest in the mortgage. As I think, it had that power. The bonds were not due, and had not, commercially speaking, been retired or extinguished. It follows that to the extent necessary to secure the note for which they are held, they are entitled to the benefit of the lien created by the terms of the mortgage."

In the case of Duncomb vs. N. Y., H. etc., R. R. Co., *supra*, the Court say, in speaking of transactions between Directors and the Corporation:

"Nor is it at all questioned that, in such case, the right of the beneficiary or those, claiming though him to avoidance, does not depend upon the question whether the Trustee in fact has acted fraudulently or in good faith and honestly, but is

founded upon the known weakness of human nature and the peril of permitting any sort of collision between the personal interests of the individual and his duties as Trustee, in his fiduciary character. (Davoue vs. Fanning, 2 Johns. Ch. 260.) But the rule was adopted to secure justice, not to work injustice; to prevent a wrong, not to substitute one wrong for another; and hence have arisen limitations upon its operation, calculated to guard it against evil results as inequitable as those it was designed to prevent. Thus the beneficiary may avoid the act of the Trustee, but cannot do so without restoring what it has received. (York Co. vs. McKenzie, 8 B. Par. Cas., 42.) To cling to the fruits of the Trustee's dealing while seeking to avoid his act; to take the benefit of his loan, and yet avoid and reverse its security, would be grossly inequitable and unjust. It would turn a rule designed as a protection into a weapon of offense and injustice. And where the Trustee's act consists, not in possessing himself of the property of the beneficiary as owner, but in taking collateral security for a debt honestly due him, or a liability justly incurred, the rule can have no application, since the payment of the debt or the discharge of the liability is an essential prerequisite of the avoidance. And this is true whether the pledge be taken for a present or precedent debt. In either case the equity to be regarded equally exists. It is upon this ground that the case of Smith vs. Lansing (22 N. Y., 520) stands. The collateral taken there was after the

creation of the liability, and we held the transaction valid. *The ground of the decision was distinctly stated to be that the association had received the direct benefit of the several amounts of money, to secure which the bonds were given, and the creditors had indirectly received the benefits of the same by the consequent increase of the assets;* and that upon the application of the beneficiary or its receiver, the Trustee should be permitted to set up any equities which existed entitling him to retain the property, either absolutely or as security for the moneys advanced or liabilities incurred. Since, therefore, in the case of a pledge delivered as security for a just and honest debt, the principal may always redeem upon payment, and the rule of equity is in no respect different, we do not see that it has any application, or can in any respect modify the legal relation of the parties."

See also the remarks of the Court upon the bonds held by Rucker, pages 300 and 301. American and English R. R. cases. Vol. 4.

If this be so as to Directors, how much stronger does the language of the Court apply to strangers to the corporation, and how much more unjust would it be to deprive Directors of bonds issued to them for building the road, than it would be to hold those issued to them as mere security for advances, invalid?

It seems to us that every principle of equity supports every bond issued to Appellants, including the 10 bonds issued to Webster and Deal.

The corporation was a party Defendant in this action. An injunction was issued against it, which restrained it from doing what it was bound to do pay its just debts, contracted in building the road, with the bonds issued for that very purpose, under the terms of the mortgage, if its creditors are willing to accept such payment

If the attorneys were willing to accept such bonds for their services, they are the only ones who have cause to complain.

As to all the other bonds, there can be no serious question, if the Court determines that they were issued in payment of debts incurred, either directly or indirectly, in building the road, and those that are held by purchasers in good faith must be held valid whether properly issued or not.

The Company vouched for their validity when it issued them and put them into circulation. The holder is protected by the authentication of the bonds in the manner provided in the mortgage.

Jones, on Railroad Securities, §§ 194, 208, 210, 213 and 214.

Stanton vs. Alabama & Chattanooga R. R. Co., 2 Woods, 523 528.

II.

There was no agreement between the mortgageor and Moran Brothers that the corporation would not issue, sell, transfer or deliver to any person any of the bonds of the Company except, or

in excess, of the 310 bonds sold to Moran Brothers until 31 miles of the road had been completed, nor was there any agreement between the Company and Moran Brothers that the Company would not sell, issue or deliver to any person the bonds of the Company for any more or greater sum of money than $10,000 worth of bonds per mile of completed road nor then until each mile was completed.

These Appellants were brought into Court by Complainants, charged with having procured the 147 bonds held by them through fraud; and we desire, before discussing the evidence and the law applicable to the case, to draw the attention of the Court to the material allegations of the Complainants' bill setting forth the facts constituting fraud, and the denials of those allegations contained in the answers, so that the Court may, in considering the case, see in advance the precise issues of fact to be determined.

The Complainants sought to have the 147 bonds declared invalid, and for that purpose alleged, as they were obliged to do, the facts constituting the alleged fraud, so that the Court might be apprised of the grounds upon which the relief prayed for was claimed, and so that the Appellants might know with certainty what they were called upon to meet.

The Complainants in their bill allege as follows:

"Your orators further show that at the time of the purchase by your orators of the said 310 bonds, and the delivery thereof to them, and in considera-

tion of such purchase and delivery, your orators made and entered into an agreement with the said Nevada and Oregon Railroad Company, which said agreement was in tenor and effect as follows, to-wit: That said Railroad Company would not issue, sell transfer or deliver to any person or persons any of the bonds of the said Railroad Company, except or in excess of the said 310 bonds, sold, issued and delivered to your orators as aforesaid, until 31 miles of the said Railroad had been completed; and that the said Nevada and Oregon Railroad would not sell, issue or deliver to any person or persons the bonds of the said Company for any more or greater sum of money than $10,000 00 worth of said bonds to each mile of completed road, nor then, until each mile of road was completed.

And your orators aver on their information and belief, and so charge the fact to be that the Respondents, and each of them, had notice of the aforesaid agreement and terms thereof as last aforesaid pleaded.

And your orators further show that notwithstanding the aforesaid agreement between your orators and the said Nevada and Oregon Railroad Company, the said Nevada and Oregon Railroad Company, by and through persons assuming to be and acting as its officers, to-wit: Trustees, President and Secretary, did issue, and caused to be issued and delivered to the Respondents, herein, in amounts as hereinafter more particularly stated,

the said 290 of said six hundred bonds, well knowing at the time that no more than 31 miles of said Railroad had been completed, and well knowing that the bonds theretofore issued and delivered to your orators were equal to $10,000 00 for each completed mile of said road; and your orators aver that the said Respondents severally and in the amounts hereinafter specified, well knowing the aforesaid covenants and agreements, and well knowing that no more than 31 miles of said road had been completed, and well knowing the fact that 310 of said bonds had already been issued and delivered to your orators, received and accepted the said bonds; and your orators aver and charge the fact to be that the said 290 bonds were issued and delivered by the said Nevada and Oregon Railroad Company, and were received by said Respondents, and each of them, with the fraudulent intent and purpose to participate in and share with your orators the benefits of said mortgage or trust deed, any sums of money realized from the sale of said mortgaged property thereunder.

"Your orators further complaining, and upon their information and belief, and so charged the fact to be, that the said 290 bonds, and each of them, were issued and delivered by the said Railroad Company and received by the said Respondents, and each of them, in security for and in payment of the debts and liabilities of one Thomas Moore, the contractor and builder of said Railroad, and of certain other individuals, and were not issued or de-

livered in security for, or payment of, the debts or liabilities of the said Nevada and Oregon Railroad Company; wherefore your orators aver that the issuance of said 290 bonds, and each of them, was, as against your orators, illegal, fraudulent and void."

The answer of the Defendants, named in the original Bill of Complaint, contained the following allegations and denials to the foregoing allegations of the original Bill:

"Defendants deny that at the time of the purchase by Complainants of the said 310 bonds, or the delivery thereof or any thereof to them, or at any other time, or that in consideration of such purchase or delivery, or upon any other consideration, Complainants made or entered into an agreement with the said Nevada and Oregon Railroad Company; or that said agreement was in tenor or effect that said Railroad Company would not issue, sell, transfer or deliver to any person or persons, any of the bonds of the said Railroad Company, except or in excess of the said 310 bonds sold, issued and delivered to said Complainants, until 31 miles, or any other number of miles, of the said railroad had been completed; or that the said Nevada and Oregon Railroad Company would not sell, issue or deliver to any person or persons the bonds of the said Company, for any sum or greater sum of money than $10,000 worth of said bonds to each mile of completed road, or then until each mile of road was completed.

"And Defendants allege that said Railroad

Company did not issue any of said bonds, except said 310 bonds, until after the completion of said 31 miles of said road?

"And Defendants deny that they, or any of them, had notice, or any notice, of the said agreement set forth in the said Bill of Complaint, or of the terms of any such agreement as pleaded in said Bill of Complaint, or otherwise.

"And Defendants allege that they are informed and believe, and upon such information and belief, allege that no agreement of any nature or kind whatever was ever made with said complainants, or with any one, by said Nevada and Oregon Railroad Company, with reference to said bonds mentioned in said Bill of Complaint, to wit: Said 3,000 bonds of $1,000 each, except said mortgage or deed of trust, in said Bill of Complaint and in this answer mentioned and set forth.

"Defendants deny that said Nevada and Oregon Railroad Company, by or through persons assuming to be or acting as its officers, to wit: Trustees, President or Secretary, did issue or cause to be issued and delivered to the Defendants herein, in the amounts, or otherwise, as in said Bill of Complaint stated—the said 290 of said 600 bonds; but Defendants allege that said Nevada and Oregon Railroad Company, through its duly constituted President, Secretary and Board of Trustees, did negotiate, sell and deliver for valuable considerations, to Defendants herein, in amounts hereinafter set forth, 117 of said 600 bonds, which were of the

series of 3,000 bonds of $1,000 each, made, executed and delivered to said Union Trust Company, as set forth in said Bill of Complaint, each and all of which said 117 of said 600 bonds were duly certified by said Union Trust Company to be one of the bonds secured by the said mortgage or deed of trust.

"And Defendants admit that they well knew that the bonds delivered to Complainants were equal to $10,000 for each completed mile of said road.

"And Defendants, further answering said Bill of Complaint, deny that they well knew, or knew at all, the covenants or agreements set forth in said Bill of Complaint, alleged to have been made between Complainants and said Nevada and Oregon Railroad Company; or that they well knew, or knew at all, that no more than 31 miles of said road had been completed, received or accepted the said bonds, or any thereof.

"And Defendants further deny that the said 290 bonds mentioned in said Bill of Complaint, or said 117 bonds negotiated and sold to Defendants, as aforesaid, and as more particularly hereinafter set forth, or any thereof, were issued or delivered by the said Nevada and Oregon Railroad Company; or were received by said Defendants, or any of them, with the fraudulent intent or purpose to participate in, or share with Complainants the benefits of the said mortgage or trust deed, or any sum of money realized from the sale of said mort-

gaged property thereunder; or with any fraudulent intent or purpose whatever; or that such purpose or intent was fraudulent—but, on the contrary, Defendants allege that the said 117 bonds were delivered by said Nevada and Oregon Railroad Company and its officers for the purpose of negotiating and selling the same, and were received by the Defendants for the purpose of getting value for the consideration paid by them therefor, and for all legal intents and purposes, the ownership of said bonds and the execution of said mortgage entitle them to.

"Defendants further answering said Bill of Complaint deny that said 290 bonds, or each or any of them, or said 117 bonds, or any of them, were issued or delivered by said Nevada and Oregon Railroad Company; or were received by Defendants, or any of them, in security of, or for the payment of the debts or liabilities of Thomas Moore, the contractor or builder of said Railroad, or certain or any other person except said Nevada and Oregon Railroad Company; or were not issued or delivered as security for, or in payment of the debts or liabilities of the said Nevada and Oregon Railroad Company; and Defendants further deny that said 290 bonds, or any of them, or said 117 bonds, or any of them, were issued by said Railroad Company, or received by Defendants, or either of them, in payment of the just debts or liabilities of said Thomas Moore, or any other person, except such debts said Railroad Company, assumed and

agreed to pay for valuable considerations paid to it by said Moore, which particular debts so paid are set forth specifically hereinafter in the paper marked Exhibit B, and made part hereof

"And Defendants further deny that the issuance of said 290 bonds, or any of them, or said 117 bonds, or any of them, was against Complainants, or against any one, illegal, fraudulent or void; but on the contrary they allege that each and all of said 117 bonds were legal, *bona fide*, honest and valid, and were issued to Defendants, as hereinafter set forth, for valuable considerations, and that each and all of said Defendands paid said Nevada and Oregon Railroad Company as much per dollar, if not more, than said Complainants paid for their 310 bonds per dollar."

The answer of the Defendants, named in the amendment to the Original Bill, contains specific denials to each of the allegations above set forth in the Original Bill, and showed that the new Defendants were the owners, by purchase in good faith, of the remaining 30 of said 147 bonds.

The Court will perceive that every allegation of every fact constituting the fraud charged in Complainants' Bill, is fully, fairly and unequivocally denied in the answers on file, and that the answers of the Defendants allege facts showing just as fully, fairly and unequivocally that each and all of the 147 bonds were issued to them for good and valuable considerations, were received by them in good faith; and that each and every bond held by

them is a valid bond of the 600 bonds issued by Defendant, mentioned in the Bill of Complaint, duly certified to as required in the mortage made to the Union Trust Company, to secure them.

It was the duty of Complainants to show by competent testimony, to the satisfaction of the Court that the facts constituting the alleged fraud existed.

According to the allegations above set forth, it is the alleged violation of the alleged contract between Moran Brothers, Complainants, and the Nevada and Oregon Railroad Company, that constitutes the fraud complained of by Complainants; to the effect that the Company would not issue, sell, transfer or deliver to any person or persons, any of the bonds of the said Railroad Company, except or in excess of the said 310 bonds held by Complainants, until 31 miles of the road had been completed; and that the Company would not sell, issue or deliver the bonds of the said Company for any more or greater sum of money than $10,000 00 worth of said bonds to each mile of completed road, nor then until each mile of road was completed.

Without some such allegations as these, with the subsequent allegation that each and all of the Defendants had notice of this agreement, the Complainants' Bill of Complaint would set forth no grounds whatever for the relief prayed for.

It will probably astonish this Court to know that no such agreement as that set forth in the bill

was ever entered into between the Complainants and the Railroad Company, and that no contract of any nature or kind whatsoever was ever entered into between the said Railroad Company and the Moran Brothers, except what is contained in the bonds held by them, and in the mortgage pleaded by Complainants in their Bill, and set forth *in extenso* by Defendants in their answer, and introduced by Defendants before the examiner.

Moore's victims, including the Complainants and these Defendants, have to content themselves with the proceeds of the sale of the road, and they have not the poor satisfaction of knowing that Moore is conscious of doing anything wrong in all his acts.

It is claimed that this alleged contract, the violation of which constitutes the alleged fraud, was the inducement which led Complainants to buy the 310 bonds. Complainants allege that this contract was made at the time of the purchase of the 310 bonds.

The evidence shows that no such contract was made at any time. No such inducements were ever held out by the Company to Complainants or any one else to buy its bonds.

The Company executed its mortgage to the Union Trust Company, as Trustees, for each and every person or corporation who should become, or be from time to time, holders of the bonds or coupons mentioned in the mortgage, or any of them.

The Union Trust Company accepted the trust, the mortgage was put on record and the Railroad Company, on April 25, 1881, duly executed and issued to the Union Trust Company 3,000 bonds of the denomination of $1,000 each.

It was provided in the mortgage that the bond provided in the mortgage should have no force or effect until certified to by the Union Trust Company that it was one of the bonds secured by the mortgage.

The Union Trust Company certified to 600 of these bonds of $1,000 each, as the mortgage provided they should be certified.

The Complainants bought 310 of these bonds so certified, and the Defendants bought 147 of them, and still hold them, and the Nevada and Oregon Railroad Company, at the time the last answer was filed, held the balance.

The Court will see from the mortgage that no limitation of the amount or number of bonds per mile, whatever, was made, in the mortgage, and that the purpose and object of executing the mortgage and issuing the bonds was to enable the Company to borrow money to make and complete the construction and equipment of the proposed Railroad.

Any one had the right to negotiate for purchase or receive any of these bonds, and if they were properly certified, they were secured by the mortgage, whether any road had been built or not.

The only question would be whether the persons holding the bonds paid a valuable consideration for them, as between them and the Company.

It is admitted that the 147 bonds held by the Appellants were each and all duly executed by the Railroad Company, were issued by it and delivered to the Union Trust Company; were certified by the Trust Company, and were then delivered by the Trust Company to the corporation, and by it delivered to the Appellants.

The evidence shows conclusively that no contracts of any nature or kind, whatsoever, except the contracts contained in the bonds and mortgage, were ever entered into between Complainants and the Railroad Company.

No contract was ever made between Complainants or any one by which the Railroad was bound, or of which the Railroad Company or these Appellants ever had any notice that tends in the slightest degree to show that the Complainants were induced to buy the 310 bonds by any limitation of the number of bonds that could or might be issued per mile.

Moran Brothers never had any dealings with the corporation. The Company unfortunately for itself, made contracts with Thomas Moore, under which Moore obtained 310 bonds for building 31 miles of road, which he never built, and which contracts Moore violated in every respect; and Moore sold these 310 bonds to Complainants, but neither the Company nor any of the

Appellants were parties or privies to any contract made by Moore with Moran Brothers; nor had they any knowledge or notice of any such contracts—and even if they had such knowledge or notice, it would have made no difference in the determination of this case.

Complainants parted with their money to Moore, so far as these Appellants are concerned, upon the agreements contained in the mortgage and in the bonds.

If any representations outside of the mortgage were made to Complainants by Moore, by and through which Complainants let him have money on the bonds, that cannot affect Appellants.

It was not only necessary that Complainants should allege the facts constituting the fraud, but that they should prove the fraud as alleged.

Says Daniel's Chancery Practice and Pleading, Vol. I, 4th Edition, p 326.

"Care, however, must be taken in framing the Bill, that everything which is intended to be proved be stated upon the face of it, otherwise evidence cannot be admissible to prove it. This is required in order that the Defendant may be aware of what the nature of the case to be made against him is."

Note 6, p. 326, id.

" No facts are properly in issue unless charged in the bill, and of course no proofs can generally be offered of facts not in the Bill; nor can relief be

granted for matter not charged, although they may be apparent from other parts of the pleading and evidence, for the Court pronounces its decision *secundum allegata et probata*."

"Story's Eq. Pl., § 257."

The Appellants objected to the introduction of all testimony offered on the part of Complainants showing or tending to show any matters or things not alleged in the Bill.

None of said Exhibits are evidence of any contract between the Complainants and the Railroad Company, nor can they claim any benefit under them, being neither parties nor privies to said contracts.

None of said contracts are pleaded in the Bill, nor is it shown that any of the conditions of said contracts have been complied with by Thomas Moore.

It was not shown that Exhibit G was executed by the authority of the Railroad Company or ratified by it.

It is not shown that it was executed by the authority of H. J. McMurray, A. H. Manning, W. F. Berry, C. A. Bragg, or either of them, or that it was ratified by them; but on the contrary, it is shown that D. W. Balch had no authority whatever, either from the Railroad Company or from H. J. McMurray, A. H. Manning, W. F. Berry or C. A. Bragg, or either of them, to make such a contract. It is shown that before the contract was

entered into, D. W. Balch telegraphed to H. J. McMurray on February 27, 1882, the terms of the contract he proposed to enter into, as follows:

"I offer 10,300 shares. Moore assigns contract and Moran's paper. Company assume all debts. You surrender draft and order for stock. Transfer back 145 shares purchased at sale. Manning surrenders Moore and Fowler's notes. Moore wants 5,000 of Moran's paper for debts here. Agreement subject to yours and Manning's approval. Write Manning. Can you get rails?

"D. W. BALCH."

Sent February 27. Complainants' testimony.

Mr. McMurray answered this telegram as follows:

"Manning and myself accept settlement as per telegram. Issue Moore's stock on road as completed. Better assign contract to me if Manning is paid. Can get rails. Answer if arranged.

"H. J. McMURRAY."

In order to bind the parties to such an agreement they were obliged to show that the parties sought to be bound must have authorized the execution of it, and in attempting to show this they have proved that no such contract was ever authorized, and that the parties here had no notice whatever that any such contract as that introduced in evidence was to be made.

Taking the telegram and its answer together,

there can be no difficulty in arriving at what these parties authorized.

They supposed that the Corporation, was to assume and pay Moore's debts, as Balch telegraphed that it was to do so. They supposed that Mr. Balch would do exactly what the Corporation authorized him to do, and nothing more, and that was to make some arrangement by which the Corporation would assume and pay the debts contracted by Moore in building a portion of the road, and get rid of Moore, so that the Company could get the credit to finish the balance of the 31 miles; and it is shown that without this the Company could not have bought a pound of nails without paying cash for it.

When the parties knew what the contract was, they utterly repudiated it, and requested the Company to do exactly what it bound itself to do—pay their debts, as its officers assured the parties it would do when the debts were contracted, and upon the faith of which the credit was given, by which credit the 31 miles of road was built.

It would be a singular contract that would be binding upon some of the parties to it, which, by its very terms, was not to be binding upon any of them unless all executed it, and under which nothing was done.

From the abortive sealing of the contract, with a patch upon which the corporate seal was impressed, conveniently produced from Mr. Fowler's

pocket in New York City, to the end of the chapter, the contract was an idle performance.

The contract was not binding on any of the parties named in it unless it was executed by all, and the evidence shows that neither Mr. McMurray, Mr. Manning, Mr Berry or Mr. Bragg authorized such a contract to be entered into.

It was not shown that anything was ever done under Exhibit G.

Time was of the essence of the contract, and the presumptions all are that the Trustee named in the contract on June 2d, 1882, delivered up every consideration he received to Thomas Moore, the party of the first part, and that the contract became as if it had never been entered into

Exhibit G, New York depositions.

Exhibit G, like all the other contracts in the record, was made solely for the benefit of Thomas Moore. Complainants were not parties to it, nor privies to it. They were not induced to buy the bonds by anything contained in it.

The following is the whole of the testimony of Charles Moran, who was the only one of the Complainants who testified in the case. We give it in full, so that the Court may without trouble see the whole length and breadth, width and depth of it, and we think the Court will see that the Complainants were not induced to part with their money

by reason of any agreement ever made by Defendant, corporation, with them.

Direct examination by Mr. Peckham.

Q.—Mr. Moran, at the time you made the contract, in March, 1881, with Mr. Moore, to purchase bonds of this Nevada and Oregon Railroad Company, did you learn or understand from Mr. Moore anything with regard to the number of bonds that were to be issued per mile?

A.—I did understand there were to be $10,000 a mile issued, on finished road.

Q.—Did you ever have any understanding or statement from Mr. Balch, the President of the Company, in that respect?

A.—I saw nothing of Mr. Balch, I think.

Q.—Until after you had made your advances?

A.—Yes, sir.

Q.—In making these advances and buying these bonds, did you place any reliance upon the fact that there was to be but $10,000 a mile, as you understood?

A.—Certainly, sir; if it had been $11,000 I would not have bought them at any price.

Q.—You say Balch was not here till later. He was here before you took the last 100 bonds?

A.—Yes, sir.

Q.—Did you have any understanding with

Mr. Balch as to the amount that was to be issued per mile?

A.—He made no statement that amounted to anything, but I saw a circular of the Nevada and Oregon Railroad Company, in which the issue was limited to $10,000 per mile.

Cross examined by Mr. King.

Q.—Did you see any resolutions of the Nevada and Oregon Railroad Company, of an official nature, that restricted the issue of bonds to $10,000 per mile?

A.—No; I don't know that I ever did.

Q.—You never saw any?

A.—No.

Q.—And the information you had was from whom?

A.—From everybody, that $10,000 per mile was the full amount of bonds that they were to issue.

Q.—By "Everybody" whom do you mean?

A.—Mr. Moore at the beginning, but everybody that I met in connection with the road.

Q.—Did you understand that the amount of the issue on the Railroad should be $310,000?

A.—On the 31 miles $310,000 and on the 300 miles, as the prospectus was, it should be $3,000,000. Three hundred miles was the contemplated length of the road, and that there was to

be $3,000,000; $10,000 per mile, and first mortgage bonds only to be issued as the road was finished.

Q.—Well, all you ever heard was what people told you?

A.—Yes.

Q.—And you never saw any document about it at all?

A.—No, sir.

Q.—Do you know anything at all about the agreement of March 25th, 1882?

A.—I don't know what you mean, sir.

(Paper handed witness.)

I don't know whether I ever saw that agreement or not. It was a point on which there was never a dispute or discussion or a word said, except that that was the fact. From the beginning we never talked of anything else.

Q.—Were you present at the time of the making of the agreement between Mr. Balch and Mr. Moore and the Railroad Company, which has been testified to in your presence?

A.—No, sir.

Q.—You say you saw a circular or prospectus?

A.—That was long afterwards.

Q.—Had it any connection with this?

A.—No; it was simply a prospectus of the road, stating $10,000 per mile as the limit of the

bonds. Mr. Balch sent me a copy; that is the way I got it.

Re-direct.

Q.—You have your 310 bonds now, in your safe?

A.—I have sir.

The Court will see that Mr. Moran never saw Mr. Balch, the President of the Company, until after he had bought the bonds from Moore; that Balch never made any statement with reference to the amount of bonds to be issued per mile. He never saw any resolution of the Corporation, and there never was any such resolution. He saw a circular, he says, of the Company, limiting the amount; but there is no proof that any such circular was ever issued by the authority of the Corporation; and Moran Brothers were not induced to buy the bonds by the circular as, Mr. Moran did not see the circular until long after the agreement of March 25th, 1882, was made. At that time, Moran Brothers had bought the whole 310 bonds.

The agreement of April 26th, 1882, shows that Moore had at that time sold the last 100 of the bonds to Moran Brothers.

Exhibit J, p. 92.

Mr. Moran does not pretend to name any officer of the Corporation who ever told him that there would be any limitation per mile. So far as the first contract, Exhibit A, is concerned, there is no agreement in it limiting the amount of bonds

per mile, but the agreement as to the amount of bonds does not depend either upon the mileage or upon the completion of the road. There is a representation in the preamble stating that the road could be built for certain cash, bonds and stock, but the preamble is not an agreement and contains no covenants.

The only limitation is contained in the eighth paragraph, p 71, Exhibit B, which provides that $310,000 in first mortgage bonds shall be issued upon the Reno Division. But the contracts were to build the whole road, and Exhibit C provided that Moore should receive $500,000 in cash, $1,700,000 in first mortgage bonds, and $2,850,000 out of a total issue of $3,400,000 upon the 170 miles of the Reno Division, from near Beckweth Pass to the Oregon line Exhibit D provided that the Corporation should deliver to Moore $450,000 in stock and $310,000 first mortgage bonds on or before March 31st, 1881. So that all agreements making the issuance of bonds to depend upon the completion of any number of miles were at an end. The 310 bonds sold to Moran were delivered to Moore under this agreement

This Court will have seen from these agreements, and the evidence introduced on the part of Moran Brothers, that the evidence utterly failed to sustain the allegations of the bill.

The agreement between Thomas Moore, as party of the first part; "Nevada and Oregon Rail-

road Company," party of the second part; D. W. Balch, A. J. McMurray, A H. Manning, W. F. Berry and C. A. Bray, parties of the third part (who are named as principal creditors, not only of Thomas Moore, but of the corporation mortgageor), and Alvin Burt, party of the fourth part (Exhibit G, p. 79), refers to the six contracts in the record, and then states:

"And, whereas, after completing 32 miles of grading on first section north from Reno, in said State of Nevada, and also commencing and grading on the next 170 miles running north, as well as providing certain rolling stock, ties, engine house, switches, and about 17 miles of main track, the contractor, party of the first part hereto, has become embarrassed, " etc.

This shows that the next 170 miles north of the 31 miles upon which the 310 bonds held by Moran Brothers had been commenced.

Upon this 170 miles, under Moore's contract, the corporation had the right to issue 1700 more first mortgage bonds.

The Circuit Court in the opinion rendered in this case (p. 233, Transcript) seems to base its decree by reason of the contract of March 25, 1882, just referred to.

Mr. Moran's testimony shows he knew nothing of the contract. He was not a party to it, nor was it made for his benefit, and as has been shown

this contract was not authorized by the creditors to whom the 147 bonds were issued.

The Company had amply provided the means to build this road as the contracts show that Moore was not only to get $10,000 in first mortgage bonds per mile, saleable at 80 cents on the dollar, but nearly all the capital stock of the road, besides a large amount of cash.

How can it be said that Moran Brothers purchased their bonds upon the condition and agreement that upon no part of the line of the road should be issued any more than $10.000 in first mortgage bonds for each mile of completed road, when the evidence showed that no such condition was placed in the mortgage, or in the bonds, or in any agreement between the bondholders and the corporation? Such condition can only be found in the contract with Moore, none of which Moore kept.

As we have said, Complainants relied solely upon what Thomas Moore told them. They bought no bonds from any one else, and never saw or talked with any one else, and never saw the prospectus Charles Moran speaks of, until after they bought the 310 bonds, nor from aught that appears from his testimony, did he ever see any of the Exhibits in evidence until after this action was commenced. If Moore told him the whole truth, he must have told him that he also agreed in his contracts to build the 31 miles of the Reno Divi-

sion for $100,000 cash, $310,000 in bonds and $450,000 in the stock of the Corporation.

There cannot be the slightest pretext for saying that the issue of bonds was limited at all, except by the mortgage. The attempt is made to patch up the case with contracts between Thomas Moore and the Corporation, which were either broken in every respect by Moore, or which were never authorized or ratified by the parties to them, or under which nothing was ever done, for the reason, among others, that Balch, McMurray, Manning, Berry and Bragg, instead of agreeing to pay the Company's debts, were urging and pressing the Company to pay what it and Moore owed them, as were also the other creditors who had some interest in the matter.

These Appellants refused to be bound by the contract, or to accept anything under it.

These Appellants were not paid by any one, except by the Company. Appellants knew that Moore had failed to build the road, and that the Company was released from all obligations to Moore. It had the right to build the road itself on Moore's failure, and it had the right to pay for it by these bonds, and it did do it.

Even under the contracts made with Moore, the Company had the right, as soon as the 31 miles of the Reno Division was built, to issue $1,700,000—1,700—of these bonds as soon as the work was commenced on the other part of the road after

the completion of the 31 miles. (See contract B.) The evidence shows that the Appellants completed the 31 miles, and that work was commenced, on the next division before any of the 147 bonds were issued. (See contract J.)

The truth is that the provision limiting the issue to 310 bonds on the first 31 miles was solely made for the Company and Moore's benefit, and Moore was only entitled to that benefit by a compliance on his part with the terms of the contract.

The evidence shows that neither the Company, nor Moore, nor the Complainants paid any attention whatever to this.

On March 23d, 1881, Thomas Moore and Complainants made Exhibit I and this contract, and the terms of the bonds and the mortgages were the sole inducement upon which Complainants bought the 310 bonds.

By this agreement Complainants agreed to pay Moore $248,000, as follows:

$40,000.....on completion of 5 miles.
$40,000.....on completion of 10 miles.
$88,000.....on completion of 21 miles.
$40,000.....on completion of 26 miles.
$40,000.....on completion of 31 miles.

Against the delivery of these 310 bonds held by Complainants, Moore agreed to complete the 31 miles as follows:

5 miles ....by May 1, 1881.
10 miles..... ....by June 1, 1881.
21 miles ....by July 1, 1881.
26 miles ....by August 1, 1881.
31 miles ....by August 15, 1881.

And Moore agreed to deliver to Complainants the 310 bonds as follows:

50 bonds .....on completion of 5 miles.
50 bonds .....on completion of 10 miles.
110 bonds .....on completion of 21 miles.
50 bonds.....on completion of 26 miles.
50 bonds .....on completion of 31 miles.

So that Moore sold his bonds to Complainants for 80 cents on the dollar under the above agreements. It was the inducement held out to Complainants by Moore, and the conditions of the mortgage and the bonds upon which Complainants paid their money and nothing else. Mr. Balch testified that Complainants negotiated 210 bonds when but 10 miles of the road was built. So that no one ever paid any attention to the provisions in Moore's contract, and certainly Complainants did not, as they received $210,000 worth of bonds, and paid $168,000 of their money without reference to any such limitation.

The testimony shows that Moore never did a lick of work upon the road after November 16, 1881, when he left Nevada.

That he only graded the road and laid 10 miles of track, yet it appears that Moran Brothers got 210 of the bonds when 10 miles of the rails had been laid, and it is to be presumed that they paid their money when they got the bonds. Exhibits A, B, C, D, E and F, were solely between Moore and the Company. The condition that the issue of bonds should be limited to $310,000 for 31 miles—$10,000 per mile, for the Reno Division—was a dependent condition. The failure of Moore to perform his contracts released the Corporation from that condition. The evidence shows that but about 10 miles of the road was completed when Moore finally quit Nevada, and that the balance of the road was completed by the Corporation itself, through the services, means and credit of these Appellants.

There is no testimony in the case pertinent, relevant or material to any issue, except the testimony as to the considerations upon which the 147 bonds were issued to Appellants.

The record of these contracts was not even constructive notice to any one. They were not such instruments as were required to be of record by the laws of Nevada, and the record only of such instruments, as are required to be of record by those laws, could be even constructive notice to anybody.

Sec. 2571, General Laws of Nevada, is as follows:

"Sec. 3 Every conveyance in writing whereby any real estate is conveyed, or may be affected, shall be acknowledged, or proved, and certified in the manner hereinafter provided."

Sec. 2593 provides:

"Sec. 24. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged and certified in the manner prescribed in this Act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, and shall be valid and binding between the parties thereto without such record."

It is doubtful whether any Director of the Corporation had any knowledge of what these contracts were. The Corporation delivered itself and all of its property to Moore, and all the Directors knew was that Moore had contracts to build the road.

It does not appear that Complainants ever saw or knew anything of Moore's contracts, beyond the fact that Moore was the contractor, and it positively appears from their own testimony that they never saw Exhibit G.

Charles Moran does not say he ever saw or knew of the contract in which the issue of bonds per mile was limited to $10,000 --and it positively

appears that he neither saw nor knew of such contract, as he bases his knowledge upon conversations he had.

He never saw Mr. Balch till after he advanced his money. All he knew was what people told him.

"Q.—And you never saw any document about it at all?

"A.—No, sir."

He never saw Exhibit G, and never saw any circular or prospectus till long after he advanced his money. Does this show or tend to show any agreement by the Company limiting the issue of bonds? A corporation can only be bound by its Board of Directors.

We think that we have shown:

First—That there never was any agreement between the Company and Complainants by which the issue of bonds was limited to $10,000 per mile.

Second—That the contracts annexed to the New York depositions, marked Exhibits A, B, C, D, E and F, did not inure to the benefit of Complainants.

That Complainants were not induced to buy the bonds by these contracts; that they were not parties or privies to these contracts, and that the limitation of the issue of bonds in these contracts on the first 31 miles of the road to $10,0000 per

mile, was a condition dependent upon Moore's fulfilling the contract by building that portion of the road, and Moore's failure to complete the road released the Company from that limitation.

Third—That the contract, marked G, was never authorized by McMurray, Manning, Berry, Bragg or the corporation, and was not ratified by them or either of them.

That it was not intended to bind, and did not bind any of the parties to it unless executed by all, and that nothing was ever done under it.

That the contract did not inure to the benefit of Complainants, and that they were neither parties nor privies to it.

Fourth—That the Corporation was not a party to any of the other contracts.

III.

It is claimed that these Defendants had either actual or constructive notice of these contracts.

The only contract of which Appellants had constructive notice, was the mortgage to the Union Trust Company.

That is the only instrument which, by the laws of Nevada, was required to be or which was entitled to be recorded. And it is only the record of such instruments that is even constructive notice.

See Statute above set forth.

Pitcher vs. Burrows, 17 Pick., 364.

18 Johns., 544.

8 Vt., 172.

James vs. Morey, 2 Cowen, 246. (See also note to this case, 14 Am. Dec., 512.)

Grellet vs. Heilshorn, 4 Nev., 532.

Sharon vs. Minnock, 6 Nev., 390.

Mesick vs. Sunderland, 6 Cal., 315, 314.

Stafford vs. Lick, 7 Cal., 490.

Brannon vs. Mesick, 10 Cal., 107.

Wade on Notice, Sec. 119, and authorities cited in note.

The record of contracts between the Corporation and Thomas Moore, was no more constructive notice to these Appellants than if Moore had never recorded them.

But suppose that the Appellants had all read and understood every contract offered and introduced in evidence, and suppose that they thoroughly knew the contents of every such contract, and the legal effect of such contracts, all they would have known is exactly what this Court will know from reading these documents.

They are shown by the testimony to have known that Moore did not build 31 miles of road. That 21 miles of the track was laid by the Corporation, through the labor, services and material

furnished by these Appellants. That the contracts were not binding upon the Company, being broken by Moore; and that they would, under the terms of the mortgage, be secure to the extent of the property of the Company, in taking these bonds.

They knew that Complainants, in buying bonds from Moore which were issued to Moore under his contracts, stood in no better position than Moore would have stood if he held the bonds himself.

Suppose Moore were the Complainant in this action, would it not be a complete answer to the action based upon the violation of the limitation contained in the contract, that Moore, although he received the full consideration for building the road, had completely failed to build it?

They knew that Complainants could not be heard to say that the Company had not kept its contract with Moore, when Moore, by his failure to build the road, compelled the Company to sell more bonds under the mortgage to complete what Moore had hardly commenced.

They knew that Exhibit "G" was never authorized, and they knew that they never were paid what was due them by any one when they received their bonds.

But which of the Appellants had any notice of any of these contracts?

It is not shown that any of the Directors had notice of the contracts containing the limitation per mile, except Mr. Balch, unless the Directors, on account of their official position, must be deemed to have had knowledge of those contracts.

There is no evidence showing that any of the other Appellants, except Webster and Deal, ever had any notice of the contracts marked Exhibits A, B, C, D, E and F. Nor that any of the other Appellants ever had notice of any of the other contracts, with the exception of Mr. Lindsay, who was Trustee for several parties, until after this action was commenced.

It is not true that Mr. Deal ever had any notice of Exhibit G before this suit was commenced. He was told that a contract had been made, by the terms of which the Company agreed to assume and pay Moore's debts, but Exhibit G is not such a contract.

Mr. Balch testifies that Mr. Deal did not know of the terms of Exhibit G, and Mr. Deal testifies positively that he never saw or knew of any such contract until after this action was commenced.

Conclusion.

Under the conditions of the mortgage, the Corporation had the right to issue and sell the

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

UNITED STATES SUPREME COURT.

H. J. McMURRAY ET AL.,
Appellants,

vs.

CHARLES MORAN ET AL.,
Respondents.

APPEAL BY DEFENDANT BELOW FROM A DECREE BY THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF NEVADA.

Statement.

The bill alleges that the Nevada and Oregon R. R. Co. made 3,000 bonds of $1,000 each, and secured the same by a mortgage to the Union Trust Company of New York as trustee.

That 600 of said 3,000 bonds were paraphed or certified by the trustee, and of those 600, complainants purchased 310.

That the R. R. Co. then agreed with complainants at the time of the purchase of the 310 bonds that the R. R. Co. would not issue any more until thirty-one miles of road had been completed and that after that it would issue only at the rate of $10,000 per mile of completed road, and only after completion of each mile for which bonds were issued.

The defendants knew of such agreement. That afterwards in breach of such agreement the R. R. Co. issued 290 more bonds in the balance of the 600 bonds, and that they were issued for precedent debts of one More, the contractor for building the road, and that the issue of such bonds was in fraud of the rights of complainants under said agreement.

The bill then specifies the bonds held by each defendant and the claim made to the same.

The bill then alleged the pendency of a suit by the trustee to foreclose the mortgage for the benefit of such bonds as should be entitled to participate, and prayed an injunction against parting with the bonds and a decree that the holders, the defendants, were not entitled to participate in the trust (Record, pp. 1 to 7).

The answer admits the purchase by complainants of the 310 bonds and denies the agreement between the R. R. Co. and the complainants that the R. R. Co. would issue no more bonds until thirty-one miles of road were completed, &c., and it also alleges in general terms that they each obtained their respective bonds in good faith for a valuable consideration.

The issues were tried by the Court, who made special findings (p. 37).

Findings sixth to tenth, inclusive, cover all the issues in the case, and are in favor of and accord with the allegations in the bill of complaint (Record, pp. 38, 39).

The decree follows the findings (pp. 40, 41).

POINTS.

First. There is no question presented by this record unless it be whether the pleadings and proofs warrant the decree, and an examination of the proofs will show that no other conclusion can be drawn therefrom.

The first question is, was there such a contract as that alleged limiting the issue of bonds?

The evidence shows that there were two railroad corporations knows as The Nevada and Oregon Railroad Company. In the first corporation the article "The" was a part of the corporate name. In the second corporation (defendant herein) the article "The" is not a part of the corporate name. August 26th, 1880, the first corporation contracted with one Thomas Moore for the building of its road. The section from Reno to Beckwith Pass was made a division, and was 30 or 31 miles long.

The contractor was to be paid partly in cash and partly in first mortgage bonds.

The contract was in writing, and limited the bonds to the extent of ten thousand dollars per mile (p. 62, fol. 165).

For the division between Reno and Beckwith Pass the contractor was to have 310 first mortgage bonds, and as the road progressed the contractor was to have all the first mortgage bonds (p. 67).

There were provisions by which the contractor would enter and take net receipts in case of default by the company, but only on paying interest on the first mortgage bonds then outstanding (pp. 68, 69).

December 4, 1880, that contract was supplemented by one which provided that the Reno division, from Reno to Beckwith Pass, should be first constructed, for which the contractor should receive 310 first mortgage bonds, and that the first mortgage bonds to be issued upon the line from Reno to the temporary terminus

(Beckwith Pass) *should be limited to $310,000* (p. 71, Sub. First, Fifth, Sixth and *Eighth*).

A separate contract was made as to the line beyond Beckwith Pass (Ex. C, pp. 73-4).

February 1st, 1881, a further supplemental contract was made by which it was provided that in case at the end of the work anything was due the contractor the contractor should receive therefor second mortgage bonds (pp. 75-76, fol. 203).

April 26, 1881, a contract was made between the second corporation (defendant herein) and said Moore (Ex. E, Record, p. 77).

This contract recited that the new company had succeeded to all the property and rights of the old and the parties agreed to be bound by said old contracts as if made between them (p. 77).

May 24, 1881, Exhibit F, the parties extended the contract one year (p. 78).

March 25th, 1882, Exhibit G, page 79, recited the difficulties existing, and on page 85, Subdivision *b*, of Section eleven, revoked the provision for a second mortgage and provided "that the issue of first mortgage bonds should be limited to $10,000 *per mile of completed road.*

March 23d, 1881, Moran Brothers, appellees, had agreed with Moore to advance him $248,000 against the delivery of the $310,000, first mortgage bonds, on the completion by Moore of the Reno division, 31 miles (Ex. 1, p. 91).

$75,000 of this was advanced after the contract (Ex. G) of March 25, 1882 (pp. 79-85. See Ex. J, p. 92).

Here then beyond question was the definite contract by the road with its contractor that no more bonds should be issued than $10,000 per mile of completed road, and but 310 bonds on the Reno division, and it is not contended that a foot of road beyond that division has been built.

Moran Bros. bought these bonds from the contractor

and were told by the contractor and by all officers of the road and by a circular that the issue should not exceed $10,000 per mile (pp. 60–61).

Because of that they bought; otherwise they would not have bought.

Moran took the bonds on the faith of his contract, and Moran Bros. took from him on the faith of the same contract, and have the same rights as to the bonds as Moore.

Second. The next question is as to the title of the defendants to the 147 bonds, being all of the 290 that were issued.

The company, on Nov. 20th, 1882, when the company and contractor were hopelessly embarrassed, by resolution, directed the trustee of the mortgage to deliver the 290 bonds to its president (Record, p. 96).

January 9th, 1883, the company by resolution of the board began *assuming* debts of the contractor and directing their payment by bonds of the company out of the said 290 bonds (Record, p. 97).

See proceedings of board at different meetings to Jan. 31st, 1883, pp. 98 to 102; testimony Balch, president, and others, pp. 102 to 170.

The testimony in behalf of defendants had no tendency to modify the testimony in behalf of complainants as to the 147 bonds being all given for precedent debts and with knowledge of complainant's rights. All were given to officers and directors of the company and persons having full knowledge of its affairs (see p. 178, 181–2).

The most that can be claimed from the testimony is that as to a few of the parties it raises some question whether the Railroad Company was not originally bound on contract, but in no case was a bond taken for other than a precedent debt.

Third. The issue of bonds being then limited by contract to 310, complainants were entitled to the decree at least against all but *bona fide* purchasers, and of such there are none.

See able opinion of Judge SABIN, of Court below (Record, p. 220).

Fourth. Judgment should be affirmed.

WHEELER H. PECKHAM,
Of Counsel for Appellees.